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# **NORTH CAROLINA REGISTER**

**VOLUME 11 • ISSUE 6 • Pages 315 - 404**

**June 14, 1996**

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Tax Review Board

Agriculture

Environment, Health, and Natural Resources

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Human Resources

Listed of Rules Codified

Rules Review Commission

Contested Case Decisions

## **PUBLISHED BY**

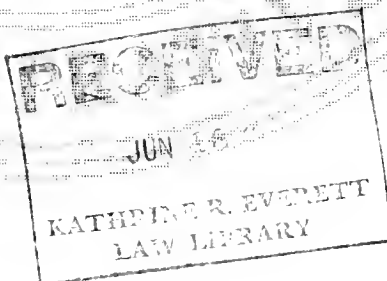
*The Office of Administrative Hearings  
Rules Division*

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# **NORTH CAROLINA REGISTER**



**Volume 11, Issue 6  
Pages 315 - 404**

**June 14, 1996**

This issue contains documents officially  
filed through May 23, 1996.

Office of Administrative Hearings  
Rules Division  
424 North Blount Street (27601)  
PO Drawer 27447  
Raleigh, NC 27611-7447  
(919) 733-2678  
FAX (919) 733-3462

Julian Mann, III, Director  
James R. Scarcella Sr., Deputy Director  
Molly Masich, Director of APA Services  
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volume and issue number	issue date	last day for filing	end of comment period	earliest register issue for publication of text	earliest date for public hearing	A. non-substantial economic impact			B. substantial economic impact			
						end of required comment period	deadline to submit to RRC for review at next RRC meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next RRC meeting	first legislative day of the next regular session	
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## EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.

GENERAL	FILING DEADLINES	NOTICE OF RULE-MAKING PROCEEDINGS	NOTICE OF TEXT
<p>The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:</p> <ol style="list-style-type: none"> <li>(1) temporary rules;</li> <li>(2) notices of rule-making proceedings;</li> <li>(3) text of proposed rules;</li> <li>(4) text of permanent rules approved by the Rules Review Commission;</li> <li>(5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;</li> <li>(6) Executive Orders of the Governor;</li> <li>(7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;</li> <li>(8) orders of the Tax Review Board issued under G.S. 105-241.2; and</li> <li>(9) other information the Codifier of Rules determines to be helpful to the public.</li> </ol>	<p><b>ISSUE DATE:</b> The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month closest to (either before or after) the first or fifteenth respectively that is not a Saturday, Sunday, or holiday for State employees.</p> <p><b>LAST DAY FOR FILING:</b> The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.</p>	<p><b>END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PROCEEDINGS:</b> This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.</p> <p><b>EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT:</b> The date of the next issue following the end of the comment period.</p>	<p><b>EARLIEST DATE FOR PUBLIC HEARING:</b> The hearing date shall be at least 15 days after the date a notice of the hearing is published.</p> <p><b>END OF REQUIRED COMMENT PERIOD</b></p> <p>(1) <b>RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT:</b> An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.</p> <p>(2) <b>RULE WITH SUBSTANTIAL ECONOMIC IMPACT:</b> An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the rule, whichever is longer.</p> <p><b>DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION:</b> The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.</p>

**COMPUTING TIME:** In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

**FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:** This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.



*This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.*

U.S. Department of Justice

Civil Rights Division

Voting Section

P.O. Box 66128

Washington, D.C. 20035-6128

DLP:GS:NT:tlb  
DJ 166-012-3  
96-1227

May 8, 1996

Robert W. Oast, Jr., Esq.  
City Attorney  
P.O. Box 7207  
Greenville, North Carolina 27835-7207

Dear Mr. Oast:

This refers to seven annexations (Ordinance Nos. 95-128 to 133 and 96-3) and their designation to districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on March 14, 1996.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Deval L. Patrick  
Assistant Attorney General  
Civil Rights Division

By:

Elizabeth Johnson  
Acting Chief, Voting Section

**TITLE 10 - DEPARTMENT OF HUMAN RESOURCES**

**CHAPTER 50 - MEDICAL ASSISTANCE**

**SUBCHAPTER 50D - ESTATE RECOVERY**

**10 NCAC 50D .0101-.0103, .0201, .0301-.0302, .0401-.0402, .0501-.0503**

The following information is a notice of intent to adopt temporary rules. These rules were published as temporary rules in 11 NCR 4, 196-199.

The DHR-Division of Medical Assistance has requested the Rules Review Commission to reconsider its action taken on February 15, 1996 to return the above-captioned rules to the Division for failure to prepare a fiscal note in compliance with G.S. 150B-21.4(b). The rules will be considered at the June 20, 1996 RRC meeting. The rules would become effective July 1, 1996 if approved at the June 20th meeting.

If the RRC does not approve the permanent rules to become effective July 1, 1996, it is the Division's intent to file temporary rules to continue the current temporary rules in effect until permanent rules become effective.

STATE OF NORTH CAROLINA  
ENVIRONMENTAL MANAGEMENT COMMISSION  
POST OFFICE BOX 29535  
RALEIGH, NORTH CAROLINA 27626-0535

PUBLIC NOTICE OF INTENT TO ISSUE STATE GENERAL  
NPDES PERMITS

Public notice of intent to issue a State National Pollutant Discharge Elimination System (NPDES) General Permit for Point Source Discharges of Stormwater associated with the following activities:

NPDES No. NCG200000 governing the discharge of stormwater associated with activities classified as establishments primarily engaged in assembling, breaking up, sorting, and wholesale trade of scrap metal.

On the basis of preliminary staff review and application of Article 21 of Chapter 143 of the General Statutes of North Carolina, Public Law 92-500 and other lawful standards and regulations, the North Carolina Environmental Management Commission proposes to modify State NPDES General Permits for the discharges as described above.

INFORMATION: Copies of the draft NPDES General Permit and Fact Sheet concerning the draft Permit is available by writing or calling:

Aisha Lau  
Water Quality Section  
N.C. Division of Environmental Management  
P.O. Box 29535  
Raleigh, North Carolina 27626-0535

Telephone (919) 733-5083 ext. 578

Persons wishing to comment upon or object to the proposed determination are invited to submit their comments in writing to the above address no later than July 14, 1996. All comments received prior to that date will be considered in the final determination regarding permit issuance. A public meeting may be held where the Director of the Division of Environmental Management finds a significant degree of public interest in any proposed permit issuance.

The draft Permit, Fact Sheet and other information are on file at the Division of Environmental Management, 512 N. Salisbury Street, Room 925-C, Archdale Building, Raleigh, North Carolina. They may be inspected during normal office hours. Copies of the information file are available upon request and payment of the costs of reproduction. All such comments and requests regarding these matters should make reference to the draft Permit Number, NCG200000.

Date: 5/22/96

\_\_\_\_\_  
A. Preston Howard, Jr., P.E., Director  
Division of Environmental Management

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of additional sales and use tax  
for the period of August 1, 1992 through July 30, 1994  
assessed against **Abana Pharmaceuticals, Inc.**

**ADMINISTRATIVE  
DECISION NUMBER: 313**

THIS MATTER was heard before the Tax Review Board on December 19, 1995 in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer. It involves the petition for review by Abana Pharmaceuticals, Inc. (hereinafter "Taxpayer") from the Final Decision of Michael A. Hannah, Assistant Secretary for Legal and Administrative Services (hereinafter "Assistant Secretary") entered on June 15, 1995, sustaining a proposed assessment of use tax for the period of August 1, 1992 through July 30, 1994.

Chairman Harlan E. Boyles, State Treasurer presided over the hearing with duly appointed member, Noel L. Allen, Attorney at Law participating. Hugh A. Wells, Chairman Utilities Commission was not present at the hearing.

The Taxpayer was represented at the hearing by Perry N. Cole, Executive Vice President; Marilyn R. Mudge, Assistant Attorney General, appeared on behalf of the Department of Revenue.

After the hearing, the Board members present took the matter under advisement pursuant to G.S. §105-241.2(b1). On February 23, 1996, a post hearing brief was filed with Board on behalf of the Taxpayer. On March 26, 1996, a post hearing brief was filed with Board on behalf of the Secretary of Revenue. On April 23, 1996, the Board reviewed the Petition, Briefs and record of the matter in the proceeding before the Assistant Secretary.

#### FINDINGS OF FACT

THE TAX REVIEW BOARD, having reviewed the Petition, Briefs and record filed in this matter, makes the following Findings of Fact:

1. Taxpayer is engaged in the business of manufacturing and selling prescription drugs.
2. Taxpayer's salespeople distribute free samples of the prescription drugs to North Carolina physicians to give to their patients.
3. The prescription drugs that are distributed by free samples to the physicians are prescribed by them to their patients.

#### CONCLUSIONS OF LAW

After reviewing the record, the Petition, Briefs and considering the foregoing findings of fact, the Tax Review Board concludes as a matter of Law:

1. The statute that sets forth exemptions from the state sales and use taxes is N.C.G.S. §105-164.13.
2. Under that statute, "the sale at retail, the use, storage or consumption in this State of the following tangible personal property is specifically exempted from the tax imposed by this Article":
  - (13) "Medicines sold on prescription of physicians, dentist or veterinarians; insulin whether or not sold on prescription."
3. The free samples of the prescription drugs distributed by Taxpayer's salespeople to the North Carolina physicians are exempt from use tax under N.C.G.S. §105-164.13(13).

DECISION

IT APPEARING TO THE BOARD, based upon the foregoing findings of fact and conclusions of law, that the drug samples distributed to North Carolina physicians are exempt from use tax pursuant to N.C.G.S. §105-164.13(13).

**IT IS THEREFORE ORDERED**, that the Final Decision of the Assistant Secretary is **REVERSED**.

Entered this the 17th day of May, 1996.

TAX REVIEW BOARD

\_\_\_\_\_  
Harlan E. Boyles, Chairman

\_\_\_\_\_  
Hugh A. Wells, Chairman  
Utilities Commission

\_\_\_\_\_  
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of additional sales and use tax  
for the period of June 1, 1991 through April 30, 1994  
assessed against **Heede Southeast, Inc.**

**ADMINISTRATIVE**  
**DECISION NUMBER: 314**

THIS MATTER was heard before the Tax Review Board on February 20, 1996 in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer. It involves the petition for administrative review filed by Heede Southeast, Inc. (hereinafter "Taxpayer") from the Final Decision of Michael A. Hannah, Assistant Secretary for Legal and Administrative Services (hereinafter "Assistant Secretary") entered on July 20, 1995 sustaining a proposed assessment of additional sales and use tax for the period of June 1, 1991 through April 30, 1994.

Chairman Harlan E. Boyles, State Treasurer presided over the hearing with duly appointed member, Noel L. Allen, Attorney at Law participating. Hugh A. Wells, Chairman Utilities Commission was not present at the hearing.

The Taxpayer was represented at the hearing by V. A. Anderson, Jr., Attorney at Law. Perry Safran, Attorney at Law and Mr. Ira Schmidt also appeared on behalf of the Taxpayer. Marilyn R. Mudge, Assistant Attorney General, appeared on behalf of the Department of Revenue.

After the hearing, the Board members present took the matter under advisement pursuant to G.S. §105-241.2(b1). On April 23, 1996, the Board reviewed the Petition, Brief and record of the matter in the proceeding before the Assistant Secretary.

THE BOARD HAVING REVIEWED THE PETITION AND RECORD MADE IN THE PROCEEDING AND HAVING CAREFULLY CONSIDERED THE MATTERS OF RECORD RENDERED THE FOLLOWING DECISION: The Assistant Secretary erred in finding that the "Equipment Rental Agreement Continued" contains terms that add to or conflict with the "Equipment Rental Agreement" thereby changing some of the terms of the rental agreement. It is the opinion of the Board that while the "Equipment Rental Agreement Continued" is not a model of good contract draftsmanship, and while it is not artfully positioned with respect to the rental contract, there existed two distinct and separate contracts. Therefore, the transportation, erection and dismantling charges set forth in the "Equipment Rental Agreement Continued" are separate and apart from the "Equipment Rental Agreement" and rental charge, and thus are not subject to sales and use tax.

AND IT APPEARING TO THE BOARD: that the findings of fact made by the Assistant Secretary were not supported by the evidence in the record; that the conclusions of law made by the Assistant Secretary were not supported by the findings of fact, and that the decision of the Assistant Secretary was not supported by the conclusions of law;

**IT IS THEREFORE ORDERED**, that the Final Decision of the Assistant Secretary is **REVERSED**.

Entered this the 17th day of May, 1996.

TAX REVIEW BOARD

\_\_\_\_\_  
Harlan E. Boyles, Chairman  
State Treasurer

\_\_\_\_\_  
Hugh A. Wells, Chairman  
Utilities Commission

\_\_\_\_\_  
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Controlled Substance Excise tax of  
July 11, 1991 against **Ted Allen Gilley and Myrtle  
Royal Gilley**

**ADMINISTRATIVE  
DECISION NUMBER: 315**

THIS MATTER was heard before the Tax Review Board (hereinafter "Board") on April 23, 1996, in the office of the State Treasurer, in the City of Raleigh, Wake County, North Carolina. It involved a petition for administrative review filed by Ted Allen Gilley and Myrtle Royal Gilley (hereinafter "Taxpayers") from the Final Decision of Michael A. Hannah, Assistant Secretary for Legal and Administrative Services for the Department of Revenue (hereinafter "Assistant Secretary") entered on September 13, 1995, sustaining a proposed controlled substance excise tax assessment of July 11, 1991.

Chairman Harlan E. Boyles presided over the hearing with duly appointed member, Noel L. Allen, Attorney at Law.

The Taxpayers were not present or represented at the hearing. Christopher E. Allen, Assistant Attorney General, appeared on behalf of the Department of Revenue.

Pursuant to N.C.G.S. §105-241.2, the Board conducted the hearing upon review of the Petition and record made in the proceeding before the Assistant Secretary. N.C.G.S. §105-241.2 does not grant this administrative Board the authority or jurisdiction to rule on the constitutionality of a statute. *Great Am. Ins. Co. v. Gold*, 254 N.C. 168, 118 S.E.2d. 792 (1961).

AND IT APPEARING TO THE BOARD: that the findings of fact made by the Assistant Secretary were fully supported by competent evidence in the record, that the conclusions of law made by the Assistant Secretary were fully supported by the findings of fact, and that the decision by the Assistant Secretary was fully supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Final Decision of the Assistant Secretary is **CONFIRMED** in every respect.

Entered this the 17th day of May, 1996.

TAX REVIEW BOARD

\_\_\_\_\_  
Harlan E. Boyles, Chairman  
State Treasurer

\_\_\_\_\_  
Hugh A. Wells  
Chairman, Utilities Commission

\_\_\_\_\_  
Noel L. Allen

STATE OF NORTH CAROLINA

BEFORE THE  
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of additional Income Tax for  
the taxable years of 1989, 1990, 1991 and 1992 against  
H. L. and Faye G. Gillespie

ADMINISTRATIVE  
DECISION NUMBER: 316

THIS MATTER was heard before the Tax Review Board (hereinafter "Board") on April 23, 1996, in the office of the State Treasurer in the City of Raleigh, Wake County, North Carolina. It involved the petition for administrative review filed by H. L. and Faye G. Gillespie (hereinafter "'Taxpayers") from the Final Decision of Michael A. Hannah, Assistant Secretary for Legal and Administrative Services for the Department of Revenue (hereinafter "Assistant Secretary") entered on June 15, 1995. In that Final Decision, the Assistant Secretary found that the Taxpayers' liability for 1992 had been overpaid and applied that overpayment to eliminate the Taxpayers' 1991 liability and reduce the 1989 liability. In the Petition, the Taxpayers did not dispute the Assistant Secretary's findings with respect to the 1991 and 1992 tax years. The Petition for administrative review concerned only the proposed assessment of additional individual income tax for the 1989 and 1990 tax years.

Chairman Harlan E. Boyles presided over the hearing with duly appointed member, Noel L. Allen, Attorney at Law.

The Taxpayer was represented at the hearing by Craig B. Wheaton; Marilyn R. Mudge, Assistant Attorney General, appeared on behalf of the Department of Revenue.

The purpose of this Board is to provide administrative review to a Taxpayer from the Secretary of Revenue's decision sustaining the assessment of tax or additional tax pursuant to North Carolina Revenue Laws. The Board after a review of the factual situation and the application of the statute to that situation, renders its decision. N.C.G.S. §105-241.2 provides that the Board's decision shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary.

THE BOARD HAVING REVIEWED THE PETITION AND RECORD MADE IN THE PROCEEDING AND HAVING CAREFULLY CONSIDERED THE MATTERS OF RECORD AND THE ARGUMENTS PRESENTED RENDERED THE FOLLOWING DECISION: that the findings of fact made by the Assistant Secretary were fully supported by competent evidence in the record; that the conclusions of law made by the Assistant Secretary were fully supported by the findings of fact; and that the decision by the Assistant Secretary sustaining the tax assessment was fully supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Final Decision of the Assistant Secretary is **CONFIRMED** in every respect.

Entered this the 17th day of May, 1996.

TAX REVIEW BOARD

\_\_\_\_\_  
Harlan E. Boyles, Chairman  
State Treasurer

\_\_\_\_\_  
Hugh A. Wells  
Chairman, Utilities Commission

\_\_\_\_\_  
Noel L. Allen



A Notice of Rule-making Proceedings is a statement of subject matter of the agency's proposed rule making. The agency must publish a notice of the subject matter for public comment at least 60 days prior to publishing the proposed text of a rule. Publication of a temporary rule serves as a Notice of Rule-making Proceedings and can be found in the Register under the section heading of Temporary Rules. A Rule-making Agenda published by an agency serves as rule-making proceedings and can be found in the Register under the section heading of Rule-making Agendas. Statutory reference: G.S. 150B-21.2.

**TITLE 10 - DEPARTMENT OF  
HUMAN RESOURCES**

**CHAPTER 41 - CHILDREN'S SERVICES**

10 NCAC 41P .0013. Other rules may be proposed in the course of the rule-making process.

Authority for the rule-making: G.S. 48-2-504; 48-3-504

**Notice of Rule-making Proceedings** is hereby given by the Social Services Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Statement of the Subject Matter:** The proposed rule governs the establishment of fees to be charged for preparation of preplacement assessments and reports to the court in adoption cases.

**Citation to Existing Rules Affected by this Rule-Making:** 10 NCAC 41P .0002, .0005, .0006, .0008, .0009, .0010, .0011, and .0012. Other rules may be proposed in the course of the rule-making process.

**Reason for Proposed Action:** The 1995 General Assembly enacted G.S. 48-2-504 which authorized an agency that prepares a report to the court in an adoption case to charge the petitioner a fee for preparing and writing the report. Also established into law was G.S. 48-3-304 which authorizes an agency that prepares a preplacement assessment in an adoption case to charge a fee for the preparation. The purpose of this rule is to establish guidelines for implementation of these statutes.

Authority for the rule-making: G.S. 48

**Statement of the Subject Matter:** 10 NCAC 41P contains rules designed to implement the adoption laws contained in Chapter 48 of the North Carolina General Statutes.

**Comment Procedures:** Anyone wishing to comment should contact Sharnese Ransome, Special Assistant to the Director, N.C. Division of Social Services, 325 N. Salisbury St., Raleigh, NC 27603, 919/733-3055.

**Reason for Proposed Action:** The 1995 General Assembly found it in the public interest to clarify the judicial process for adoptions, to promote the integrity and finality of adoptions, and to encourage prompt, conclusive dispositions of adoption proceedings. Towards this end, SB 159 was ratified. This action included rewriting many of the adoption laws contained in G.S. 48. The amendments proposed to 10 NCAC 41P will provide for implementation of those changes.

**Comment Procedures:** Anyone wishing to comment should contact Sharnese Ransome, Special Assistant to the Director, N.C. Division of Social Services, 325 N. Salisbury St., Raleigh, NC 27603, 919/733-3055.

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**Notice of Rule-making Proceedings** is hereby given by the Department of Human Resources in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Citation to Existing Rules Affected by this Rule-Making:**

*This Section contains the text of proposed rules. At least 60 days prior to the publication of text, the agency published a Notice of Rule-making Proceedings. The agency must accept comments on the proposed rule for at least 30 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. The required comment period is 60 days for a rule that has a substantial economic impact of at least five million dollars (\$5,000,000). Statutory reference: G.S. 150B-21.2.*

## TITLE 2 - DEPARTMENT OF AGRICULTURE

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the Board of Agriculture intends to amend rules cited as 2 NCAC 9C .0701, .0702; 48A .0206, .0211, .0214, .1103, .1110; 48B .0112, .0114, .0119, .0120; 52B .0201; and repeal 2 NCAC 9C .0704. Notice of Rule-making Proceedings was given in the NC Register on March 15, 1996.

**Proposed Effective Date:** March 2, 1997

**Public Hearing:** A public hearing was held on these proposed rules on April 3, 1996, pursuant to a Notice of Rule-making Proceedings published at 10 NCR 24, 3056, March 15, 1996.

**Reason for Proposed Action:** 2 NCAC 9C .0701, .0702, .0704 - To remove portions of rule which have been pre-empted by federal rules. 2 NCAC 48A .0206, .0211, .0214 - To provide for interstate movement of bees through North Carolina without a permit under certain conditions; to make compliance with laws and rules a condition of compliance agreements; and to clarify that bee disorders as well as diseases are grounds for regulatory action. 2 NCAC 48A .1103, .1110 - Since the purpose of the rule is to prevent the spread of plant diseases, a 75-mile exemption will serve the same purpose and will be simpler and more efficient to enforce than an exemption based upon the number of sales. 2 NCAC 48B .0112, .0114, .0119, .0120 - To clarify, make corrections, and delete obsolete or unnecessary provisions. 2 NCAC 52B .0201 - Often, it is not feasible to forward a copy of the health certificate within ten days. Thirty days is more reasonable and will still meet the needs of our animal health programs.

**Comment Procedures:** Comments may be submitted in writing no later than July 15, 1996, to David S. McLeod, Secretary, North Carolina Board of Agriculture, P.O. Box 27647, Raleigh, NC 27611.

**Fiscal Note:** These Rules do not affect the expenditures or revenues of state or local government funds. These Rules do not have a substantial economic impact of at least five million dollars (\$5,000,000) in a 12-month period.

## CHAPTER 9 - FOOD AND DRUG PROTECTION DIVISION

## SUBCHAPTER 9C - CURRENT GOOD MANUFACTURING PRACTICES FOR SPECIFIC FOOD INDUSTRIES

### SECTION .0700 - BOTTLED WATER

#### .0701 SCOPE

(a) The source approval requirements of this Section apply to bottled water sources located within the state. Bottled water from sources located outside the state must comply with the source approval requirements of Title 21, Code of Federal Regulations, Part 129, which is adopted by reference in 2 NCAC 9B .0016(f)(15).

~~(b) The labeling requirements of this Section apply to bottled water offered for sale in the state.~~

Authority G.S. 106-139.

#### .0702 DEFINITIONS

For the purposes of this Section:

- (1) "Approved source" when used in reference to a plant's product or operations water, means a source of water and the water therefrom, whether it be from a spring, well, municipal water supply, or any other source that has been approved by the Department of Agriculture's designated representative, the Department of Environment, Health, and Natural Resources, Environmental Health Division, Public Water Supply Section in accordance with this Section;
- (2) "Spring" means a natural orifice in the earth's surface through which water freely flows without the aid of mechanical means;
- (3) "Well" means a hole that is cored, bored, drilled, jetted, dug or otherwise constructed so as to tap an aquifer through which water is derived by mechanical means. ~~If the water rises to the surface on its own without aid of mechanical means due to hydrostatic pressure, the well would be an artesian well.~~

Authority G.S. 106-139.

#### .0704 LABELING

~~Bottled water which uses the word "spring" or "well" in its labeling to describe the product, other than in a trade name or company name, shall be deemed to be misbranded unless the source of such water conforms to the definitions of those terms in Rule .0702 of this~~

Section-

Statutory Authority G.S. 106-139.

CHAPTER 48 - PLANT INDUSTRY

SUBCHAPTER 48A - PLANT PROTECTION

SECTION .0200 - HONEY AND BEE INDUSTRY

.0206 THE TRANSPORTATION OF BEES

The transportation or importation into North Carolina from any other state or country of bees of the superfamily apoidea in any stage of development, the causal agents of their diseases or disorders, their pests, their products, nests or hives, and associated equipment are prohibited except under the following conditions:

- (1) All bees of the superfamily apoidea except *apis mellifera* and cross bred strains of *apis mellifera* with other species of *apis* that are naturalized in the United States shall be allowed entry into North Carolina only by scientific permit. Procedures for obtaining scientific permit are:

- (a) An application for a permit to move regulated articles shall be obtained from:

State Apiarist

Plant Industry Division

North Carolina Department of

Agriculture

Post Office Box 27647

Raleigh, North Carolina 27611

This application shall be returned to the State Apiarist for processing;

- (b) Decisions on acceptance or rejection of applications for movement of regulated articles for scientific purposes are based on the following criteria:

- (i) pest or disease risk hazard;
    - (ii) safeguards against spread which can be applied;
    - (iii) amount of material involved;
    - (iv) biological conditions in the area in which the regulated article is to be moved;
    - (v) method of packaging and method of shipment to be employed;
    - (vi) use for which the regulated articles is to be applied.

- (2) Bees of the species, *apis mellifera* and strains of *apis mellifera* cross bred with other species of *apis* that are naturalized in the United States herein referred to as bees and their equipment and products may be allowed entry into North Carolina under the following conditions:

- (a) Live adult bees in cages, without combs or foundation provisioned with "candy" or "syrup" made from sugar and boiled honey

possessing a valid certificate of inspection will be admitted when not from an area under quarantine;

- (b) Bees on combs or foundation, nuclei, used hives, used combs and other used apiary equipment of any kind are prohibited except by permit issued according to the provisions of the rules in this Section;
  - (c) New or unused apiary equipment and products packed for nonbee consumption may be transported into North Carolina without restriction;
  - (d) Pollen shipped for bee food may be transported into North Carolina when free of bee disease;
  - (e) Nuclei of commercial beekeepers or a beekeeper who is not regularly in the business of raising queens, package bees or nuclei for sale are prohibited except by permit issued according to the provisions of the rules in this Section;
  - (f) Nuclei of queen breeders, package bee producers, or nuclei producers must be accompanied by a valid certificate of apiary inspection issued by the proper official of the state of origin and marked with the North Carolina compliance agreement number. A compliance agreement may be made between the State Apiarist and those rearing bees in other states for sale as nuclei providing the shipper agrees to the conditions in the compliance agreement;
  - (g) The transportation into North Carolina from any other state or country of bees on comb, used hive bodies, frames, combs and other apiary equipment may be allowed into North Carolina when each shipment is accompanied by a valid permit issued by the State Apiarist. Any colony or colonies of bees or used apiary equipment of any kind found to be moving or to have been moved into North Carolina in violation of the requirements of this Section shall be subject to seizure, destruction, or such other disposition as shall be determined by the State Apiarist, or other authorized inspector, without compensation to the owner.

- (3) Bees may be transported through North Carolina in interstate commerce only under the following conditions:

- (a) Hives must be securely covered at all times;
    - (b) Transporting vehicles must keep motors running at all times unless refueling, or unless the bees are enclosed in a refrigerated containment vehicle that maintains the

bees at a constant temperature below 45 degrees F.;

- (c) Transporting vehicles must remain within one mile of the interstate highway; and
- (d) The vehicle operator or other responsible person must immediately report to the North Carolina Department of Agriculture any accidental or intentional release of bees.

(3) (4) Bees may be transported freely within North Carolina except as restricted by quarantine, clean-up areas, or other rules herein.

*Authority G.S. 106-634 through 106-644.*

#### .0211 COMPLIANCE AGREEMENT

A compliance agreement may be made between the State Apiarist and those rearing bees for sale ~~as nuclei~~ providing the shipper agrees to:

- (1) Notify the State Apiarist of ~~nuclei~~ bees shipped into or within North Carolina, the date shipped, and destination;
- (2) Not use chemotherapy to mask the presence of disease;
- (3) Not exchange used frames in the operation;
- (4) Have all of his bees inspected twice a year and send the State Apiarist copies of health certificates ~~issued~~ issued;
- (5) Meet all other conditions stipulated by the State Apiarist and provided for by regulations.

If conditions within the state of origin warrant or violations of the compliance agreement or other health standards occur, the State Apiarist may discontinue the issuance of compliance agreements and revoke any outstanding agreements. The compliance agreement expires December 31 of each year unless revoked by the State Apiarist prior to that date.

*Authority G.S. 106-634 through 106-644.*

#### .0214 INFESTED APIARY MATERIAL LIABLE TO DESTRUCTION

(a) Anyone possessing bees, apiary products, or equipment that are infested or infected with infectious and contagious bee diseases or disorders must disinfect or sterilize such bees, apiary products, or equipment in such a manner as to prevent propagation or spread hazard of the disease.

(b) If bees, equipment, or apiary products that are infested or infected with infectious and contagious bee diseases or disorders are not satisfactorily disinfected or sterilized the inspector may take measures to eradicate such bee diseases or disorders at the expense of the beekeeper.

(c) If all other satisfactory sterilization treatments or fumigations are not available or acceptable to the beekeeper, bees, apiary products, or equipment that are infested with contagious and infectious bee diseases or disorders shall be

destroyed by the State Apiarist or inspector without compensation to the beekeeper.

*Authority G.S. 106-634 through 106-644.*

### SECTION .1100 - TOBACCO PLANT CERTIFICATION

#### .1103 UNLAWFUL USE OR DISTRIBUTION OF PLANTS

(a) No person, firm, company, partnership or corporation (hereinafter "person") shall pack, transport, sell or offer for sale, ship or bring into or plant in this state any tobacco plants produced out of state unless such plants are certified tobacco plants and are imported under the tobacco plant import permit.

(b) Only certified tobacco plants shall be sold or offered for sale in North Carolina, except that a person may ~~make no more than three sales sell or donations donate or a combination thereof of~~ uncertified tobacco plants produced in North Carolina to residents of this state ~~in a single calendar year~~ provided the planting location is within 75 miles from where the plants were produced.

(c) A North Carolina resident, including any firm, company, partnership or corporation having its principal place of business in this state, engaged in the production of tobacco on land located both in North Carolina and a contiguous state, may apply to the Plant Pest Administrator for an exemption from the certification and importation requirements of this Section. Exemptions may be granted if each of the following conditions exist:

- (1) the land is used for tobacco production;
- (2) the land lies both in this state and a contiguous state; and
- (3) the land does not extend more than 30 miles from the North Carolina border.

*Authority G.S. 106-65.45; 106-65.46; 106-284.18; 106-420.*

#### .1110 STANDARDS

(a) All tobacco plants shall meet the requirements of all applicable state and federal plant pest quarantines.

(b) All certified tobacco plants offered for sale or imported under permit into North Carolina shall meet the following requirements:

- (1) The soil in the beds in which the plants are to be grown shall be fumigated under plastic cover with methyl bromide (minimum 60 percent in formulation at the rate indicated on the label for tobacco transplant beds).
- (2) All plants shall be field inspected a maximum of five days prior to their being offered for sale in North Carolina.
- (3) All plants shall be found apparently free from all injurious plant pests including but not limited to insects, diseases and nematodes.
- (4) Special emphasis shall be made to ensure that the

plants are apparently free of blue mold, target spot, black shank, Granville wilt, Fusarium wilt, virus diseases and root knot nematodes.

- (5) To aid in ensuring apparent freedom from injurious plant pests, the grower shall make full use of all compatible and approved pest control practices during the growing of the transplants.

Authority G.S. 106-65.45; 106-65.46; 106-284.18; 106-420.

## SUBCHAPTER 48B - FERTILIZER

### SECTION .0100 - FERTILIZER STANDARDS

#### .0112 REPORT REQUIRED AND METHOD OF REPORTING

Each manufacturer or firm having fertilizer registered in North Carolina shall report to the Commissioner of Agriculture the tonnage of each grade of fertilizer shipped to each destination in the state. This information may be reported by either of the following methods:

- (1) by sending to the Commissioner a copy of the invoice or order minus price quotation, on each shipment of fertilizer in or into this state, within 30 days after shipment is made;
- (2) by submitting a monthly ~~by grade by county~~ summary; such summary to be submitted by the 15th of the month following summary period.

Authority G.S. 106-673.

#### .0114 SPECIALTY FERTILIZER-PESTICIDE MIXTURES

Any specialty fertilizer containing a minimum of 20 percent plant food may be sold in ~~admixture~~ a mixture with pesticides under the following conditions:

- (1) Each formulation shall be registered as provided in 2 NCAC 48B .0113;
- (2) Each formulation shall be of such pesticide and fertilizer combination as to be in agreement with sound practice and application in these respective fields;
- (3) The products shall be labeled and intended for use only as specialty fertilizer mixtures; i.e., for noncommercial crop use;
- (4) The formulations, claims and labeling are subject to approval by the Commissioner of Agriculture or his duly designated agent;
- (5) Products shall be offered for sale in a maximum bag size of 80 pounds, and sizes of the registrant's choice when the amount is less than 80 pounds.

Authority G.S. 106-673.

#### .0119 DATA

Data to substantiate claims are requested when questions

arise regarding the ability of a product to perform as claimed. Data shall be developed from tests conducted under conditions identical to or closely related to those present in North Carolina. If such data are not available, registration ~~shall be~~ is refused.

Authority G.S. 106-673.

#### .0120 REFUSAL OF REGISTRATION

Registration is refused on fertilizer products when the Commissioner finds that the product will not supply ~~efficient~~ sufficient needs of a plant when used according to directions.

Authority G.S. 106-673.

## SUBCHAPTER 52B - ANIMAL DISEASE

### SECTION .0200 - ADMISSION OF LIVESTOCK TO NORTH CAROLINA

#### .0201 HEALTH REGULATIONS IN GENERAL

(a) No animal, including poultry or birds of any species, that is affected with, or recently exposed to, any infectious, contagious, or communicable disease, or which originates from a quarantine area, shall be transported or in any manner moved into the state until written permission for such importation has been obtained from:

State Veterinarian of North Carolina

North Carolina Department of Agriculture

Raleigh, North Carolina 27611

Those diseased or exposed animals which are approved by the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture for interstate shipment for immediate slaughter are exempt from this provision.

(b) All livestock (including the American buffalo or bison which for the purpose of this Section shall be considered as beef cattle) transported or otherwise moved into the state shall be accompanied by an official health certificate, and permit when required, which shall be attached to the waybill or shall be in the possession of the driver of the vehicle or person in charge of the livestock.

(c) A copy of the health certificate approved by the chief livestock sanitary official of the state of origin shall be forwarded within ~~ten~~ 30 days of issuance to:

State Veterinarian

472 Agriculture Building

Post Office Box 26026

Raleigh, North Carolina 27611

(d) Livestock entering North Carolina without a proper health certificate, and permit when required, shall be quarantined and held at the owner's risk and expense until released by the State Veterinarian.

Authority G.S. 106-307.4; 106-307.5; 106-317; 106-540.

**TITLE 10 - DEPARTMENT OF HUMAN RESOURCES**

**N**otice is hereby given in accordance with G.S. 150B-21.2(c) that the Division of Facility Services intends to amend rules cited as 10 NCAC 3R .3001, .3020, .3030 .3032, .3040 and .3050. Notice of Rule-making Proceedings was given in 10:23 NCR 2956 on March 1, 1996.

**Proposed Effective Date:** January 30, 1997

**All Public Hearings** will be conducted at 1:30 - 2:30 p.m. on the following dates and locations:

July 8, 1996  
(Monday)  
Asheville  
MAHEC  
501 Biltmore Avenue  
Classroom Room #1  
Asheville, NC 28801-4686

July 11, 1996  
(Thursday)  
Greensboro  
Council of Governments  
Koger Office Center  
(near Howard Johnson's)  
2216 W. Meadowview Road  
Suite 201, Wilmington Building  
(2nd Floor Conference Room)  
Greensboro, NC 27407-3480

July 11, 1996  
(Thursday)  
Greenville  
The Willis Building  
East Carolina University  
300 East First Street  
Greenville, NC 27858-4356

July 12, 1996  
(Friday)  
Charlotte  
Rankin Education Center - Auditorium  
Carolinas Medical Center  
1200 Blythe Boulevard  
Charlotte, NC

July 12, 1996  
(Friday)  
Wilmington  
Coastal AHEC  
New Hanover Regional Med. Ctr.  
Auditorium -- Ground Floor  
2131 S. 17th Street  
Wilmington, NC

July 15, 1996  
(Monday)  
Raleigh  
Division of Facility Services  
Conference Room #201  
701 Barbour Drive  
Raleigh, NC 27603

For additional information please call the Medical Facilities Planning Section at 919-733-4130.

**Reason for Proposed Action:** To amend rules to reflect changes in need determinations and policies applicable to health service facilities which also will appear in the 1997 State Medical Facilities Plan.

**Comment Procedures:** Comments, statements, data and other information may be submitted in writing to Jackie Sheppard, Rule-making Coordinator, P.O. Box 29530, Raleigh, NC 27626-0530 no later than August 13, 1996.

**Fiscal Note:** These Rules affect the expenditure or distribution of State funds subject to the Executive Budget Act, Article 1 of Chapter 143. These Rules affect the expenditures or revenues of local government funds. These Rules do have a substantial economic impact of at least five million dollars (\$5,000,000) in a 12-month period.

**CHAPTER 3 - FACILITY SERVICES**

**SUBCHAPTER 3R - CERTIFICATE OF NEED REGULATIONS**

**SECTION .3000 - STATE MEDICAL FACILITIES PLAN**

**.3001 CERTIFICATE OF NEED REVIEW CATEGORIES**

The agency has established nine categories of facilities and services for certificate of need review and will determine the appropriate review category or categories for all applications submitted pursuant to 10 NCAC 3R .0304. For proposals which include more than one category, the agency may require the applicant to submit separate applications. If it is not practical to submit separate applications, the agency will determine in which category the application will be reviewed. The review of an application for a certificate of need will commence in the next review schedule after the application has been determined to be complete. The nine categories of facilities and services are:

- (1) Category A. Proposals for acute health service facilities, except those proposals included in Categories B through H, including but not limited to the following types of projects: renovation, construction, equipment, and acute care services.
- (2) Category B. Proposals for long-term nursing facility beds and new continuing care facilities applying for exemption under 10 NCAC 3R .3050(b)(2).
- (3) Category C. Proposals for new psychiatric facilities; psychiatric beds in existing health care facilities; new intermediate care facilities for the mentally retarded (ICF/MR) and ICF/MR beds in existing health care facilities; new substance abuse and chemical dependency facilities; substance abuse and chemical dependency beds in existing health care facilities.
- (4) Category D. Proposals for new dialysis stations in response to the "county need" or "facility need" methodologies; and relocations of existing dialysis stations to another county.
- (5) Category E. Proposals for new or expanded inpatient rehabilitation facilities and inpatient rehabilitation beds in other health care facilities; and new or expanded ambulatory surgical facilities except those proposals included in Category H.
- (6) Category F. Proposals for new home health agencies or offices, new hospice home care programs, new hospice inpatient beds, and new hospice residential beds.
- (7) Category G. Proposals for converting hospital beds to nursing care under 10 NCAC 3R .3050(b)(1); ~~and for new dialysis stations as the result of "adjusted need determinations" for Dare and Carteret counties.~~ demonstration projects; and relocations of nursing facility beds under 10 NCAC 3R .3050(b)(7).
- (8) Category H. Proposals for bone marrow transplantation services, burn intensive care services, neonatal intensive care services, open heart surgery services, solid organ transplantation services, air ambulance equipment, cardiac angioplasty equipment, cardiac catheterization equipment, heart-lung bypass machines, gamma knives, lithotriptors, magnetic resonance imaging scanners, positron emission tomography scanners, and major medical equipment as defined in G.S. 131E-176(14f), diagnostic centers as defined in G.S. 131E-176(7a), and oncology treatment centers as defined in G.S. 131E-176(18a).
- (9) Category I. Proposals involving cost overruns; expansions of existing continuing care facilities which are licensed by the Department of Insurance at the date the application is filed and are applying under exemptions from need determinations in 10 NCAC 3R .3030; relocations within the same county of existing health service facilities, beds or dialysis stations which do not involve an increase in the number of health service facility beds or stations; reallocation of beds or ~~stations~~ services; Category A proposals submitted by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990; proposals submitted pursuant to 10 NCAC 3R .3050(a)(3) by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990; and any other proposal not included in Categories A through H.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

### **.3020 CERTIFICATE OF NEED REVIEW SCHEDULE**

The agency has established the following schedule for review of categories and subcategories of facilities and services in ~~1996- 1997.~~

- (1) Category B. Subcategory Long-Term Nursing Facilities.

County	CON Beginning Review Date
Alexander	April 1, 1996
Henderson	April 1, 1996
McDowell	August 1, 1996
Rutherford	March 1, 1996

County	CON Beginning Review Date
Watauga	March 1, 1996
Alamance	August 1, 1996
Lee	September 1, 1996
Wake	May 1, 1996
Brunswick	December 1, 1996
Cumberland	December 1, 1996
New Hanover	September 1, 1996
Pender	May 1, 1996
Beaufort	December 1, 1996
Onslow	March 1, 1996
Pitt	May 1, 1996

County	CON Beginning Review Date
<u>Burke</u>	<u>February 1, 1997</u>
<u>Cherokee</u>	<u>October 1, 1997</u>
<u>Jackson</u>	<u>October 1, 1997</u>
<u>Macon</u>	<u>October 1, 1997</u>
<u>Yancey</u>	<u>February 1, 1997</u>
<u>Caswell</u>	<u>August 1, 1997</u>
<u>Davidson</u>	<u>October 1, 1997</u>
<u>Surry</u>	<u>August 1, 1997</u>
<u>Yadkin</u>	<u>August 1, 1997</u>
<u>Iredell</u>	<u>April 1, 1997</u>
<u>Lincoln</u>	<u>April 1, 1997</u>
<u>Union</u>	<u>August 1, 1997</u>
<u>Johnston</u>	<u>March 1, 1997</u>
<u>Wake</u>	<u>December 1, 1997</u>
<u>Hoke</u>	<u>March 1, 1997</u>
<u>Moore</u>	<u>May 1, 1997</u>
<u>Currituck</u>	<u>December 1, 1997</u>
<u>Greene</u>	<u>September 1, 1997</u>



County	CON Beginning Review Date
<u>Martin</u>	<u>December 1, 1997</u>
<u>Nash</u>	<u>September 1, 1997</u>

(2) Category C. Subcategory Detox-Only Beds.

(a) ~~Subcategory Intermediate Care Facilities for Mentally Retarded.~~

Mental Health Planning Areas (Constituent Counties)		CON Beginning Review Date
<del>-2</del>	<del>(Buncombe, Madison, Mitchell, Yancey)</del>	<del>April 1, 1996</del>
<del>-3</del>	<del>(Alleghany, Ashe, Avery, Watauga, Wilkes)</del>	<del>December 1, 1996</del>
<del>-5</del>	<del>(Caldwell, Burke, Alexander, McDowell)</del>	<del>December 1, 1996</del>
<del>24</del>	<del>(Davidson)</del>	<del>October 1, 1996</del>
<del>10</del>	<del>(Mecklenburg)</del>	<del>April 1, 1996</del>
<del>12</del>	<del>(Stanley, Cabarrus, Union)</del>	<del>October 1, 1996</del>
<del>18</del>	<del>(Orange, Person, Chatham)</del>	<del>November 1, 1996</del>
<del>35</del>	<del>(Craven, Jones, Pamlico, Carteret)</del>	<del>July 1, 1996</del>

(b) ~~Subcategory Detox Only Beds.~~

Mental Health Planning Areas (Constituent Counties)		CON Beginning Review Date
<del>-1</del>	<del>(Jackson, Haywood, Macon, Cherokee, Clay, Graham, Swain)</del>	<del>December 1, 1996</del>
<del>-4</del>	<del>(Transylvania, Henderson)</del>	<del>December 1, 1996</del>
<del>-5</del>	<del>(Caldwell, Burke, Alexander, McDowell)</del>	<del>December 1, 1996</del>
<del>-6</del>	<del>(Rutherford, Polk)</del>	<del>December 1, 1996</del>
<del>-8</del>	<del>(Gaston, Lincoln)</del>	<del>December 1, 1996</del>
<del>-9</del>	<del>(Catawba)</del>	<del>December 1, 1996</del>
<del>11</del>	<del>(Rowan, Iredell, Davie)</del>	<del>December 1, 1996</del>
<del>13</del>	<del>(Surry, Yadkin)</del>	<del>June 1, 1996</del>
<del>14</del>	<del>(Forsyth, Stokes)</del>	<del>June 1, 1996</del>
<del>15</del>	<del>(Rockingham)</del>	<del>June 1, 1996</del>
<del>16</del>	<del>(Guilford)</del>	<del>June 1, 1996</del>
<del>17</del>	<del>(Alamance, Caswell)</del>	<del>June 1, 1996</del>
<del>18</del>	<del>(Orange, Person, Chatham)</del>	<del>June 1, 1996</del>

Mental Health Planning Areas (Constituent Counties)		CON Beginning Review Date
20	(Vance, Granville, Franklin, Warren)	<del>June 1, 1996</del>
21	(Davidson)	November 1, 1996
23	(Robeson, Bladen, Scotland, Columbus)	November 1, 1996
24	(Cumberland)	November 1, 1996
25	(Lee, Harnett)	November 1, 1996
26	(Johnston)	November 1, 1996
27	(Wake)	November 1, 1996 <u>November 1, 1997</u>
28	(Randolph)	November 1, 1996
31	(Wayne)	May 1, 1996
32	(Wilson, Greene)	May 1, 1996
33	(Edgecombe, Nash)	May 1, 1996
34	(Halifax)	May 1, 1996
35	(Craven, Jones, Pamlico, Carteret)	May 1, 1996
36	(Lenoir)	May 1, 1996
38	(Hertford, Bertie, Gates, Northampton)	May 1, 1996
39	(Beaufort, Washington, Tyrrell, Hyde, Martin)	May 1, 1996
40	(Pasquotank, Chowan, Perquimans, Camden, Dare, Currituck)	May 1, 1996
41	(Duplin, Sampson)	May 1, 1996

- (3) Category D. Subcategory End Stage Renal Disease Dialysis Stations. Dialysis station review in response to the "county need" or "facility need" methodologies shall be conducted under the provisions of 10 NCAC 3R .3032.
- (4) Category F. Subcategory Home Health Agencies or Offices.

HSA	CON Beginning Review Date
I	<del>October 1, 1996</del> <u>December 1, 1997</u>
II	<del>March 1, 1996</del> <u>April 1, 1997</u>
III	June 1, 1996 <u>1997</u>
IV	November 1, 1996 <u>1997</u>
V	March 1, 1996 <u>1997</u>
VI	July 1, 1996 <u>1997</u>

- (5) Category G. Subcategory ~~New Dialysis Stations as a result of "Adjusted Need Determinations."~~  
Demonstration Project on Pediatric Nursing Care

<u>County</u> <u>Geographic Area</u>	<u>CON Beginning</u> <u>Review Date</u>
<u>Carteret</u>	<u>March 1, 1996</u>
<u>Dare</u>	<u>March 1, 1996</u>
<u>Statewide</u>	<u>February 1, 1997</u>

- (6) Category H.

- (a) Subcategory Magnetic Resonance Imaging Scanners

<u>County</u>	<u>CON Beginning</u> <u>Review Date</u>
<u>Buncombe</u>	<u>April 1, 1997</u>

- (b) Subcategory Oncology Treatment Centers

<u>Oncology Treatment Centers</u> <u>Planning Areas (Counties)</u>	<u>CON Beginning</u> <u>Review Date</u>
<u>Halifax, Hertford, Northampton</u>	<u>May 1, 1997</u>

- (7) ~~(6)~~ Applications for certificates of need will be reviewed pursuant to the following review schedule, unless another schedule has been specified in Items (1) through ~~(5)~~ (6) of this Rule or it has been determined in 10 NCAC 3R .3030 that there is no need for the health service or facility proposed by the applicant.

<u>CON Beginning</u> <u>Review Date</u>	<u>HSA</u> <u>I, II, III</u>	<u>HSA</u> <u>IV, V, VI</u>
<u>January 1</u>	<u>--</u>	<u>--</u>
<u>February 1</u>	<u>-- A, B, G, I</u>	<u>-- G</u>
<u>March 1</u>	<u>A, B, F, G, I --</u>	<u>A, B, F, G, I</u>
<u>April 1</u>	<u>B, F, H, I</u>	<u>--</u>
<u>May 1</u>	<u>--</u>	<u>B, C, H, I</u>
<u>June 1</u>	<u>A, C, D, <del>I, F,</del> E, I</u>	<u>D</u>
<u>July 1</u>	<u>--</u>	<u>A, F, I</u>
<u>August 1</u>	<u>B, E, I</u>	<u>--</u>
<u>September 1</u>	<u>--</u>	<u>B, E, I</u>
<u>October 1</u>	<u>A, B, F, I</u>	<u>--</u>
<u>November 1</u>	<u>--</u>	<u>A, C, F, I</u>
<u>December 1</u>	<u>C, D, F, H, I</u>	<u>B, D, H, I</u>

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**.3030 FACILITY AND SERVICE NEED DETERMINATIONS**

Facility and service need determinations are shown in Items (1) - (8) of this Rule. The need determinations shall be revised continuously throughout ~~1996~~ 1997 pursuant to 10 NCAC 3R .3040.

- (1) Category A. Acute Health Service Facilities. It is determined that there is no need for additional acute care beds and no reviews are scheduled.
- (2) Category B. Long-Term Nursing Facility Beds. It is determined that the counties listed below need additional Long-Term Nursing Facility Beds as specified. There is no need for additional Long-Term Nursing Facility Beds in other counties and no other reviews are scheduled.

County	Number of Nursing Beds Needed
Alexander	30
Henderson	90
McDowell	30
Rutherford	40
Watauga	20
Alamance	90
Lee	30
Wake	120
Brunswick	60
Cumberland	90
New Hanover	90
Pender	30
Beaufort	30
Onslow	40
Pitt	60
Burke	70
Cherokee	30
Jackson	30
Macon	40
Yancey	20
Caswell	20
Davidson	100
Surry	60
Yadkin	30
Iredell	70

County	Number of Nursing Beds Needed
<u>Lincoln</u>	<u>30</u>
<u>Union</u>	<u>60</u>
<u>Johnston</u>	<u>70</u>
<u>Wake</u>	<u>140</u>
<u>Hoke</u>	<u>30</u>
<u>Moore</u>	<u>70</u>
<u>Currituck</u>	<u>10</u>
<u>Greene</u>	<u>20</u>
<u>Martin</u>	<u>30</u>
<u>Nash</u>	<u>50</u>

(3) Category C.

- (a) Psychiatric Facility Beds. It is determined that there is no need for additional psychiatric beds and no reviews are scheduled.
- (b) Intermediate Care Facility Beds for the Mentally Retarded. It is determined that ~~the mental health planning areas listed in the following table~~ there is no need for additional Intermediate Care Facility beds for the Mentally Retarded ("ICF/MR beds"; beds") and no reviews are scheduled. ~~The table identifies the number of new child and adult ICF/MR beds needed by each of the listed planning areas. These new ICF/MR beds shall only be used to convert existing five bed ICF/MR beds into six bed facilities. There is no need for new ICF/MR facilities or for ICF/MR facilities with more than six beds in these planning areas. There is no need for any additional ICF/MR Beds in any other mental health planning areas and no other reviews are scheduled, except as provided in Rule 10 NCAC 3R .3040(a)(8).~~

Mental Health Planning Area (Constituent Counties)		Need Determination	
		Child	Adult
-2	(Buncombe, Madison, Mitchell, Yancey)	—1	—1
-3	(Alleghany, Ashe, Avery, Watauga, Wilkes)	—0	—1
-5	(Caldwell, Burke, Alexander, McDowell)	—1	—0
24	(Davidson)	—0	—1
40	(Mecklenburg)	—1	—0
42	(Stanly, Cabarrus, Union)	—1	—2
48	(Orange, Person, Chatham)	—0	—1
35	(Craven, Jones, Pamlico, Carteret)	—2	—0

(c) Chemical Dependency Treatment Beds.

- (i) It is determined that there is no need for any additional chemical dependency treatment beds other than detox-only beds for adults. The following table lists the mental health planning areas that need detox-only beds for adults and identifies the number of such beds needed in each planning area. There is no need for additional detox-only beds for adults in any other mental health planning areas. No other reviews for chemical dependency treatment beds are scheduled.

Mental Health Planning Areas (Constituent Counties)	Mental Health Planning Regions	Number of Detox-Only Beds Needed
-1 (Jackson, Haywood, Macon, Cherokee, Clay, Graham, Swain)	—W	—10
-4 (Transylvania, Henderson)	—W	—10
-5 (Caldwell, Burke, Alexander, McDowell)	—W	—4
-6 (Rutherford, Polk)	—W	—10
-8 (Gaston, Lincoln)	—W	—20
-9 (Catawba)	—W	—8
11 (Rowan, Iredell, Davie)	—W	—10
13 (Surry, Yadkin)	—NC	—2
14 (Forsyth, Stokes)	—NC	—10
15 (Rockingham)	—NC	—10
16 (Guilford)	—NC	—10
17 (Alamance, Caswell)	—NC	—6
18 (Orange, Person, Chatham)	—NC	—2
20 (Vance, Granville, Franklin, Warren)	—NC	—10
21 (Davidson)	—SC	—10
23 (Robeson, Bladen, Scotland, Columbus)	—SC	—5
24 (Cumberland)	—SC	—10
25 (Lee, Harnett)	—SC	—10
26 (Johnston)	—SC	—7
27 (Wake)	SC	10
28 (Randolph)	—SC	—4
31 (Wayne)	—E	—10
32 (Wilson, Greene)	—E	—10
33 (Edgecombe, Nash)	—E	—6
34 (Halifax)	—E	—10
35 (Craven, Jones, Pamlico, Carteret)	—E	—10
36 (Lenoir)	—E	—10
38 (Hertford, Bertie, Gates, Northampton)	—E	—4
39 (Beaufort, Washington, Tyrrell, Hyde, Martin)	—E	—5
40 (Pasquotank, Chowan, Perquimans, Camden, Dare, Currituck)	—E	—10
41 (Duplin, Sampson)	—E	—10

- (ii) "Detox-only beds for adults" are chemical dependency treatment beds that are occupied exclusively by persons who are eighteen years of age or older who are experiencing physiological withdrawal from the effects of alcohol or other drugs.
- (iii) The county or counties which comprise each mental health planning area are listed in 10 NCAC 3R .3010(b).
- (iv) Detox-only beds for adults may be developed outside of the mental health planning area in which they are needed if:
  - (A) The beds are developed in a contiguous mental health planning area that is within the same mental health planning region, as defined by 10 NCAC 3R .3010(c); and
  - (B) The program board in the planning area in which the beds are needed and the program board in the planning area in which the beds are to be developed each adopt a resolution supporting the development of the beds in the contiguous planning area.
- (4) Category D. Kidney Disease Treatment Centers and Dialysis ~~Stations~~ Stations. Need for dialysis stations ~~stations~~, except as otherwise provided in Item (7) of this Rule, is determined semiannually as provided by 10 NCAC 3R .3032.
- (5) Category E.
  - (a) Inpatient Rehabilitation Facility Beds. (i) ~~Except as provided in Sub-item (5)(a)(ii) of this Rule, it~~ It is determined that there is no need for any additional inpatient rehabilitation facility beds and no reviews are scheduled.
  - (ii) ~~It is determined that there is a need for a demonstration project consisting of one inpatient rehabilitation unit containing no more than 10 inpatient rehabilitation facility beds in Wilson County. The purpose of the project shall be to demonstrate whether such a unit is viable in terms of cost, utilization, and good medical practice; whether such a unit increases the utilization of inpatient rehabilitation services by patients who could benefit from such services; and whether such a unit improves patient outcomes. An application for a certificate of need for the demonstration project shall:~~
    - (A) ~~Conform to the requirements of the rules in 10 NCAC 3R .2800, with the exception of 10 NCAC 3R .2803(b);~~
    - (B) ~~Demonstrate that the project's rehabilitation services beds shall be developed solely by the conversion of existing licensed health service facility beds;~~
    - (C) ~~Demonstrate that the project's rehabilitation services beds shall be licensed, certified, and placed into operation within 12 months after the certificate of need is issued;~~
    - (D) ~~Contain the applicant's commitment to submit to the Certificate of Need Section three annual reports on the operation of the demonstration project. The annual report shall be postmarked on or before the thirtieth day following the anniversary of the licensing of the demonstration project and shall contain the following information:~~
      - (I) ~~The demonstration project's average per diem patient charges for the past year;~~
      - (II) ~~The demonstration project's average per discharge patient charges for the past year;~~
      - (III) ~~An accounting of the operational costs and patient revenues of the demonstration project for the past year;~~
      - (IV) ~~The total number of patients served by the demonstration project during the past year;~~
      - (V) ~~A list of the demonstration project's patient payor sources for the past year;~~
      - (VI) ~~A description of the demonstration project's patient origin by county for the past year;~~
        - and
      - (VII) ~~An assessment of patient outcomes in the demonstration project during the past year.~~

~~The target average annual occupancy rate for the demonstration project is the average of the average annual occupancy rates reported by or for all existing inpatient rehabilitation facilities or units in their 1996 license renewal applications. The demonstration project shall meet or exceed this target average annual occupancy rate during at least one period of 12 consecutive calendar months within five years after the demonstration project is licensed. If it does not, the demonstration project shall be terminated automatically and the beds shall revert to their prior health service facility bed category. Additionally, the rehabilitation facility beds shall automatically revert to their prior health service facility bed category if the applicant voluntarily terminates the demonstration project.~~

  - (b) Ambulatory Surgery Operating Rooms. Surgical Facilities. It is determined that there is no need for additional ambulatory surgery operating rooms surgical facilities and no reviews are scheduled, except that a Rural Primary Care Hospital designated by the N.C. Office of Rural Health Services pursuant to Section

1820(f) of the Social Security Act may apply for a certificate of need to convert existing operating rooms for use as a freestanding ambulatory surgical facility. It is also determined that there is no need for additional licensed ambulatory surgical facilities to perform gastrointestinal endoscopy procedures in the State.

(6) Category F.

- (a) New Home Health Agencies or Offices. It is determined that the Health Service Areas identified in 10 NCAC 3R .3010 and listed below need additional Home Health Agencies or Offices as specified.

HSA	Number of Agencies or Offices Needed
I	1
II	1
III	1
IV	1
V	1
VI	1

- (b) New Hospice Home Care Programs. It is determined that there is no need for additional Hospice Home Care Programs and no reviews are scheduled.

(c) New Hospice Inpatient Beds.

- (i) Single Counties. Single counties with a projected deficit of six or more beds are allocated beds based on the projected deficit. It is determined that there is no need for additional single county Hospice Inpatient Bed facilities and no reviews are scheduled.
- (ii) Contiguous Counties. It is determined that any combination of two or more contiguous counties taken from the following list shall have a need for new hospice inpatient beds if the combined bed deficit for the grouping of contiguous counties totals six or more beds. Each county in a grouping of contiguous counties must have a deficit of at least one and no more than five beds. The need for the grouping of contiguous counties shall be the sum of the deficits in the individual counties. For purposes of this Rule, "contiguous counties" shall mean a grouping of North Carolina counties which includes the county in which the new hospice inpatient facility is proposed to be located and any one or more of the North Carolina counties which have a common border with that county, even if the borders only touch at one point. No county may be included in a grouping of contiguous counties unless it is listed in the following table:

County	Hospice Inpatient Bed Deficit
Alexander	1
Ashe	1
<u>Burke</u>	<u>1</u>
Haywood	1
<u>Wilkes</u>	<u>1</u>
<del>Mitchell</del>	4
Polk	1
Rutherford	3
Transylvania	1



County	Hospice Inpatient Bed Deficit
Watauga	1
Alamance	4
Davidson	2
Rockingham	3 <u>2</u>
Stokes	2
Surry	4 <u>2</u>
<u>Yancey</u>	<u>1</u>
Cabarrus	2
Gaston	4 <u>3</u>
Iredell	1
Lincoln	1
Rowan	1
Stanly	1
Union	2 <u>1</u>
Chatham	1
Durham	5 <u>4</u>
Johnston	1
Lee	1
Wake	4
Bladen	1
Brunswick	1
Columbus	3
<u>Cumberland</u>	<u>1</u>
Harnett	1
Moore	2
Pender	1
Richmond	+ <u>2</u>
Robeson	1
Scotland	1
Bertie	1
Craven	1
Duplin	2 <u>1</u>
Edgecombe	1
Hertford	1

County	Hospice Inpatient Bed Deficit
Nash	1
Northampton	1
Onslow	1
Pitt	1
Wilson	1
Vance	1

- (7) Category G. Kidney Disease Treatment Facilities and Dialysis Stations. It is determined that Carteret and Dare Counties have a need for additional dialysis stations that is not revealed by the standard need methodology in 10 NCAC 3R .3032 because of conditions unique to these two counties. The dialysis station need in Carteret and Dare Counties is shown in the following table: Subcategory Demonstration Project on Pediatric Nursing Care:

- (a) It is determined that nine nursing facility beds are needed to demonstrate the efficacy of short-term (less than 30 days) care of medically fragile infants and children. This demonstration project shall provide services to support medically fragile children who are primarily cared for at home and shall provide data to assist in determining if these children can be successfully cared for at home over the long-term with intermittent inpatient nursing facility admission. Because of improved medical procedures and care, more infants with complex medical needs are surviving and are being discharged from hospitals. The medical equipment and care needed by these children in the home is quite sophisticated. Pediatric patients suffering from acquired brain injury or from major trauma with significant orthopaedic problems may also require continued services, which include intermittent inpatient nursing care services, after discharge from rehabilitation hospitals. The proposed project shall be designed to ease the transition from the hospital environment to care at home for these patient groups. It shall also offer respite care and other services to low birth-weight children, to children with serious chronic conditions, and to children with rehabilitation needs.
- (b) An applicant for the project shall demonstrate that home health services shall be provided through a home health agency. Furthermore, an applicant shall demonstrate coordination with other health services, including a hospice provider, an acute care provider, and an inpatient rehabilitation provider. Project oversight shall include at least one Pediatrician who is willing to serve as medical advisor and willing to assist in evaluation of the demonstration project's effectiveness. The goal of the services provided shall be for long-term maintenance of the pediatric patient at home.
- (c) The demonstration project shall provide data to evaluate the effectiveness of this type of program in a least these ways:
- (i) Enhanced parent confidence/willingness to care for the child at home
  - (ii) Reduced length of stay for hospitalization episodes
  - (iii) Reduced hospitalizations/rehospitalizations
  - (iv) Reduced incidence of institutionalization of children to long-term care facilities
  - (v) Outcomes of care -- especially relative to rehabilitation, chronic disease care
  - (vi) Cost data -- cost efficiencies, expense, reimbursement issues.
- (d) The demonstration project shall provide data to evaluate if additional programs in North Carolina would benefit the medically fragile pediatric population. Data shall be provided to the NC State Health Coordinating Council at least annually, beginning in the second year of the project's operation. Annual data reporting is to continue, until directed otherwise by the State Health Coordinating Council, or until the demonstrated activity becomes incorporated as a regular part of the State Medical Facilities Plan.

County Geographic Area	Number of New Dialysis Stations Needed <u>Nursing Beds Needed for the Pediatric Demonstration Project</u>
Carteret	6

<u>County Geographic Area</u>	<u>Number of New Dialysis Stations Needed Nursing Beds Needed for the Pediatric Demonstration Project</u>
<u>Dare</u>	<u>4</u>
<u>Statewide</u>	<u>9</u>

(8) Category H.

- (a) Open heart surgery services. It is determined that there is no need for additional open heart surgery services and no reviews are scheduled; except that a health service facility that currently provides these services may apply for a certificate of need to expand its existing services at its existing site or location to meet specific needs if the existing services were utilized at or above 80% of capacity during the 12 month period reflected in the most recent licensure application on file with the Division of Facility Services. ~~utilization of the health service facility's existing open heart surgery services exceeds 80% of capacity.~~
- (b) Heart-Lung Bypass Machines. It is determined that there is no need for additional heart-lung bypass machines and no reviews are scheduled; except that a health service facility that currently provides open heart surgery services may apply for a certificate of need to acquire additional heart-lung bypass machinery at its existing site or location if the existing heart-lung machinery used by the health service facility is was utilized at or above 80% of capacity during the 12 month period reflected in the most recent licensure application on file with the Division of Facility Services.
- (c) Cardiac Angioplasty Equipment. It is determined that there is no need for additional cardiac angioplasty equipment and no reviews are scheduled; except that a health service facility that currently provides cardiac angioplasty services may apply for a certificate of need to acquire additional cardiac angioplasty equipment at its existing site or location if utilization of the existing cardiac angioplasty equipment used by the health service facility exceeds was utilized at or above 80% of capacity. ~~capacity during the 12 month period reflected in the most recent licensure application on file with the Division of Facility Services.~~
- (d) Cardiac Catheterization Equipment. It is determined that there is no need for additional fixed or mobile cardiac catheterization equipment and no reviews are scheduled; except that a health service facility that currently provides cardiac catheterization services may apply for a certificate of need to acquire additional cardiac catheterization equipment at its existing site or location if utilization of the existing cardiac catheterization equipment used by the health service facility exceeds was utilized at or above 80% of capacity. ~~capacity during the 12 month period reflected in the most recent licensure application on file with the Division of Facility Services.~~ Mobile cardiac catheterization equipment and services shall only be approved for development on hospital sites.
- (e) Solid organ transplant services shall be developed and offered only by academic medical center teaching hospitals as designated in 10 NCAC 3R .3050(a)(3). It is determined that there is no need for new solid organ transplant services and no reviews are scheduled.
- (f) Bone Marrow Transplantation Services. It is determined that allogeneic bone marrow transplantation services shall be developed and offered only by academic medical center teaching hospitals as designated in 10 NCAC 3R .3050(a)(3). It is determined that there is no need for additional allogeneic or autologous bone marrow transplantation services and no reviews are scheduled.
- (g) Gamma Knives. It is determined that there is no need for gamma knives and no reviews are scheduled.
- (h) Positron Emission Tomography Scanners. It is determined that there is no need for additional positron emission tomography scanners for purposes other than research and no reviews are scheduled.
- (i) Lithotriptors. It is determined that there is no need for additional lithotriptors and no reviews are scheduled.
- (j) Magnetic Resonance Imaging Scanners. It is determined that Buncombe County has a need for one additional fixed magnetic resonance imaging scanner. There is no need for additional fixed magnetic resonance imaging scanners in other counties and no other reviews are scheduled. There is no need for any conversion of a mobile magnetic resonance imaging scanner site to a fixed magnetic resonance imaging scanner site in any county and no reviews are scheduled.
- (k) Oncology Treatment Centers and Linear Accelerators.
  - (i) It is determined that there is no need for any additional oncology treatment centers in the State and no reviews are scheduled.
  - (ii) It is determined that one linear accelerator is needed in the planning area consisting of Halifax,

Hertford, and Northampton Counties. There is no need for additional linear accelerators in any other counties and no other reviews are scheduled.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

### .3032 DIALYSIS STATION NEED DETERMINATION

(a) The Medical Facilities Planning Section (MFPS) shall determine need for new dialysis stations two times each calendar year, and shall make a report of such determinations available to all who request it. This report shall be called the North Carolina Semiannual Dialysis Report (SDR). Data to be used for such determinations, and their sources, are as follows:

- (1) Numbers of dialysis patients, by type, county and facility, from the Southeastern Kidney Council, Inc. (SEKC) and the Mid-Atlantic Renal Coalition, Inc. as of December 31, ~~1995~~ 1996 for the March SDR and as of June 30, ~~1996~~ 1997 for the September SDR.
- (2) Certificate of need decisions, decisions appealed, appeals settled, and awards, from the Certificate of Need Section, DFS.
- (3) Facilities certified for participation in Medicare, from the Certification Section, DFS.
- (4) Need determinations for which certificate of need decisions have not been made, from MFPS records.

Need determinations in this report shall be an integral part of the State Medical Facilities Plan, as provided in G.S. 131E-183.

(b) Need for new dialysis stations shall be determined as follows:

(1) County Need

- (A) The average annual rate (%) of change in total number of dialysis patients resident in each county from the end of ~~1994~~ 1992 to the end of ~~1995~~ 1996 is multiplied by the county's ~~1995~~ 1996 year end total number of patients in the SDR, and the product is added to each county's most recent total number of patients reported in the SDR. The sum is the county's projected total ~~1996~~ 1997 patients.
- (B) The percent of each county's total patients who were home dialysis patients at the end of ~~1995~~ 1996 is multiplied by the county's projected total ~~1996~~ 1997 patients, and the product is subtracted from the county's projected total ~~1996~~ 1997 patients. The remainder is the county's projected ~~1996~~ 1997 in-center dialysis patients.
- (C) The projected number of each county's ~~1996~~ 1997 in-center patients is divided by 3.2. The quotient is the projection of the county's ~~1996~~ 1997 in-center dialysis stations.
- (D) From each county's projected number of ~~1996~~ 1997 in-center stations is subtracted the county's number of stations certified for Medicare, CON-approved and awaiting certification, awaiting resolution of CON appeals, and the number represented by need determinations in previous State Medical Facilities Plans or Semiannual Dialysis Reports for which CON decisions have not been made. The remainder is the county's ~~1996~~ 1997 station need projection.
- (E) If a county's ~~1996~~ 1997 station need projection is ten or greater and the SDR shows that utilization of each dialysis facility in the county is 80% or greater, the ~~1996~~ 1997 county station need determination is the same as the ~~1996~~ 1997 station need projection. If a county's ~~1996~~ 1997 station need projection is less than ten or the utilization of any dialysis facility in the county is less than 80%, the county's ~~1996~~ 1997 station need determination is zero.

(2) Facility Need:

A dialysis facility located in a county for which the result of the County Need methodology is zero in the reference Semiannual Dialysis Report (SDR) is determined to need additional stations to the extent that:

- (A) Its utilization, reported in the SDR, is greater than 3.2 patients per station.
- (B) Such need, calculated as follows, is reported in an application for a certificate of need:
  - (i) The facility's number of in-center dialysis patients reported in the previous SDR (SDR<sub>1</sub>) is subtracted from the number of in-center dialysis patients reported in the current SDR (SDR<sub>2</sub>). The difference is multiplied by 2 to project the net in-center change for 1 year. Divide the projected net in-center change for the year by the number of in-center patients from SDR<sub>1</sub> to determine the projected annual growth rate.
  - (ii) The quotient from Subpart (b)(2)(B)(i) of this Rule is divided by 12.
  - (iii) The quotient from Subpart (b)(2)(B)(ii) of this Rule is multiplied by the number of months from the most recent month reported in the current SDR until the end of calendar ~~1996~~ 1997.
  - (iv) The product from Subpart (b)(2)(B)(iii) of this Rule is multiplied by the number of the facility's in-center patients reported in the current SDR and that product is added to such reported number of in-center patients.
  - (v) The sum from Subpart (b)(2)(B)(iv) of this Rule is divided by 3.2, and from the quotient is subtracted the facility's current number of certified and pending stations as recorded in the current SDR. The

remainder is the number of stations needed.

(C) The facility may apply to expand to meet the need established in Subpart (b)(2)(B)(v) of this Rule, up to a maximum of ten stations.

(c) The schedule for publication of the North Carolina Semiannual Dialysis Report (SDR) and for receipt of certificate of need applications based on each issue of this report in ~~1996~~ 1997 shall be as follows:

Date Data for Period Ending	Receipt of SEKC Report	Publication of SDR	Receipt of CON Applications	Beginning Review Dates
<del>Dec. 31, 1995</del>	<del>Feb. 28, 1996</del>	<del>March 20, 1996</del>	<del>May 16, 1996</del>	<del>June 1, 1996</del>
<del>June 30, 1996</del>	<del>Aug. 31, 1996</del>	<del>Sept. 20, 1996</del>	<del>Nov. 15, 1996</del>	<del>Dec. 1, 1996</del>
<u>Dec. 31, 1996</u>	<u>Feb. 28, 1997</u>	<u>March 20, 1997</u>	<u>May 16, 1997</u>	<u>June 1, 1997</u>
<u>June 30, 1997</u>	<u>Aug. 29, 1997</u>	<u>Sept. 19, 1997</u>	<u>Nov. 14, 1997</u>	<u>Dec. 1, 1997</u>

(d) An application for a certificate of need pursuant to this Rule shall be accepted only if it demonstrates a need by utilizing one of the methods of determining need outlined in this Rule.

(e) An application for a new End Stage Renal Disease facility ~~facility, other than applications for dialysis stations to be developed in Dare and Carteret Counties pursuant to 10 NCAC 3R .3030 (7).~~ shall not be approved unless it documents the need for at least 10 stations based on utilization of 3.2 patients per station per week.

(f) Home patients will not be included in determination of need for new stations.

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

### **.3040 REALLOCATIONS AND ADJUSTMENTS**

#### **(a) REALLOCATIONS.**

(1) Reallocations shall be made only to the extent that 10 NCAC 3R .3030 determines that a need exists after the inventory is revised and the need determination is recalculated.

(2) Beds or services which are reallocated once in accordance with this Rule shall not be reallocated again. Rather, the Medical Facilities Planning Section shall make any necessary changes in the next published amendment to 10 NCAC 3R .3030.

(3) Dialysis stations that are withdrawn, relinquished, not applied for or decertified shall not be reallocated. Instead, any necessary redetermination of need shall be made in the next scheduled publication of the Semiannual Dialysis Report.

(4) Appeals of Certificate of Need Decisions on Applications. Need determinations of beds or services for which the CON Section decision has been appealed shall not be reallocated until the appeal is resolved.

(A) Appeals Resolved Prior to ~~September~~ August 17: If an appeal is resolved in the calendar year prior to ~~September~~ August 17, the beds or services shall not be reallocated by the CON Section; rather the Medical Facilities Planning Section shall make the necessary changes in the next amendment to 10 NCAC 3R .3030.

(B) Appeals Resolved On Or After ~~September~~ August 17: If the appeal is resolved on or after ~~September~~ August 17 in the calendar year, the beds or services, except for dialysis stations, shall be made available for a review period to be determined by the CON Section, but beginning no earlier than 60 days from the date that the appeal is resolved. Notice shall be given by the Certificate of Need Section no less than 45 days prior to the due date for receipt of new applications.

(5) Withdrawals and Relinquishments. Except for dialysis stations, a need determination for which a certificate of need is issued, but is subsequently withdrawn or relinquished, is available for a review period to be determined by the Certificate of Need Section, but beginning no earlier than 60 days from:

(A) the last date on which an appeal of the notice of intent to withdraw the certificate could be filed if no appeal is filed,

(B) the date on which an appeal of the withdrawal is finally resolved against the holder, or

(C) the date that the Certificate of Need Section receives from the holder of the certificate of need notice that the certificate has been voluntarily relinquished.

Notice of the scheduled review period for the reallocated services or beds shall be given no less than 45 days prior to the due date for submittal of the new applications.

(6) Need Determinations for which No Applications are Received

- (A) ~~Services or Beds with Scheduled Review in the Calendar Year on or Before October 1: Need determinations, or portions of such need, for services or beds in this category include long-term nursing care beds, home health agencies or offices, hospice home care programs, hospice inpatient beds, and beds in intermediate care facilities for the mentally retarded (ICF/MR) with the exception of ICF/MR need determinations with a scheduled review that begins after October 1.~~ The Certificate of Need Section shall not reallocate the services or beds in this category for which no applications were received, because the Medical Facilities Planning Section will have sufficient time to make any necessary changes in the determinations of need for these services or beds in the next annual amendment to 10 NCAC 3R .3030.
- (B) ~~Services or Beds with Scheduled Review in the Calendar Year After October 1: Need determinations for services or beds in this category include acute care beds, psychiatric beds, substance abuse beds, ICF/MR beds, bone marrow transplantation services, burn intensive care services, neonatal intensive care services, open heart surgery services, solid organ transplantation services, air ambulance equipment, cardiac angioplasty equipment, cardiac catheterization equipment, heart lung bypass machines, gamma knives, lithotriptors, magnetic resonance imaging scanners, positron emission tomography scanners, major medical equipment as defined in G.S. 131E-176(14f), diagnostic centers and oncology treatment centers for which review commences after October 1.~~ A need determination in this category for which no application has been received by the last due date for submittal of applications shall be available to be applied for in the second Category I review period in the next calendar year for the applicable HSA. Notice of the scheduled review period for the reallocated beds or services shall be given by the Certificate of Need Section no less than 45 days prior to the due date for submittal of new applications.
- (7) Need Determinations not Awarded because Application Disapproved.
  - (A) Disapproval in the Calendar Year prior to ~~September~~ August 17: Need determinations or portions of such need for which applications were submitted but disapproved by the Certificate of Need Section before ~~September~~ August 17, shall not be reallocated by the Certificate of Need Section. Instead the Medical Facilities Planning Section shall make the necessary changes in the next annual amendment to 10 NCAC 3R .3030 if no appeal is filed.
  - (B) Disapproval in the Calendar Year on or After ~~September~~ August 17: Need determinations or portions of such need for which applications were submitted but disapproved by the Certificate of Need Section on or after ~~September~~ August 17, shall be reallocated by the Certificate of Need Section except for dialysis stations. A need in this category shall be available for a review period to be determined by the Certificate of Need Section but beginning no earlier than 95 days from the date the application was disapproved, if no appeal is filed. Notice of the scheduled review period for the reallocation shall be mailed no less than 80 days prior to the due date for submittal of the new applications.
- (8) Reallocation of ~~Delicensed and Decertified~~ ICF/MR Beds. If an ICF/MR facility's ~~license and~~ Medicaid certification ~~are~~ is relinquished or revoked, the ICF/MR beds in the facility shall be reallocated by the Department of Human Resources, Division of Facility Services, Medical Facilities Planning Section pursuant to the provisions of the following sub-parts. The reallocated beds shall only be used to convert five-bed ICF/MR facilities into six-bed facilities.
  - (A) If the number of five-bed ICF/MR facilities in the mental health planning region in which the beds are located equals or exceeds the number of reallocated beds, the beds shall be reallocated solely within the planning region after considering the recommendation of the Regional Team of Developmental Disabilities Services Directors.
  - (B) If the number of five-bed ICF/MR facilities in the mental health planning region in which the beds are located is less than the number of reallocated beds, the Medical Facilities Planning Section shall reallocate the excess beds to other planning regions after considering the recommendation of the Developmental Disabilities Section in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. The Medical Facilities Planning Section shall then allocate the beds among the planning areas within those planning regions after considering the recommendation of the appropriate Regional Teams of Developmental Disabilities Services Directors.
  - (C) The Department of Human Resources, Division of Facility Services, Certificate of Need Section shall schedule reviews of applications for these beds pursuant to Subparagraph (a)(5) of this Rule.
- (b) CHANGES IN NEED DETERMINATIONS.
  - (1) The need determinations in 10 NCAC 3R .3030 and .3032 shall be revised continuously throughout the calendar year to reflect all changes in the inventories of:
    - (A) the health services listed at G.S. 131E-176 (16)f;
    - (B) health service facilities;
    - (C) health service facility beds;

- (D) dialysis stations;
  - (E) the equipment listed at G.S. 131E-176 (16)f1; and
  - (F) mobile medical equipment;
- as those changes are reported to the Medical Facilities Planning Section. However, need determinations in 10 NCAC 3R .3030 or .3032 shall not be reduced if the relevant inventory is adjusted upward 30 days or less prior to the first day of the applicable review period.
- (2) Inventories shall be updated to reflect:
    - (A) decertification of home health agencies or offices, intermediate care facilities for the mentally retarded, and dialysis stations;
    - (B) delicensure of health service facilities and health service facility beds;
    - (C) demolition, destruction, or decommissioning of equipment as listed at G.S. 131E-176(16) f1 and s;
    - (D) elimination or reduction of a health service as listed at G.S. 131E-176(16) f;
    - (E) psychiatric beds licensed pursuant to G.S. 131E-184(c);
    - (F) certificates of need awarded, relinquished, or withdrawn, subsequent to the preparation of the inventories in the State Medical Facilities Plan; and
    - (G) corrections of errors in the inventory as reported to the Medical Facilities Planning Section.
  - (3) Any person who is interested in applying for a new institutional health service for which a need determination is made in 10 NCAC 3R .3030 or .3032 may obtain information about updated inventories and need determinations from the Medical Facilities Planning Section.
  - (4) Need determinations resulting from changes in inventory shall be available for a review period to be determined by the Certificate of Need Section, but beginning no earlier than 60 days from the date of the action identified in Subsection (b). Notice of the scheduled review period for the need determination shall be given no less than 45 days prior to the due date for submittal of the new applications.

*Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).*

### **.3050 POLICIES**

#### **(a) ACUTE CARE FACILITIES AND SERVICES**

- (1) Use of Licensed Bed Capacity Data for Planning Purposes. For planning purposes the number of licensed beds shall be determined by the Division of Facility Services in accordance with standards found in 10 NCAC 3C .4510 ~~Bed Capacity~~ .6200 and .3102(d).
- (2) Utilization of Acute Care Hospital Bed Capacity. Conversion of underutilized hospital space to other needed purposes shall be considered an alternative to new construction. Hospitals falling below utilization targets in 10 NCAC 3R .3050(a)(4) are assumed to have underutilized space. Any such hospital proposing new construction must clearly demonstrate that it is more cost-effective than conversion of existing space.
- (3) Exemption from Plan Provisions for Certain Academic Medical Center Teaching Hospital Projects. Projects for which certificates of need are sought by academic medical center teaching hospitals may qualify for exemption from provisions of 10 NCAC 3R .3030.
  - (A) The State Medical Facilities Planning Section shall designate as an Academic Medical Center Teaching Hospital any facility whose application for such designation demonstrates the following characteristics of the hospital:
    - (i) ~~(A)Exemption from Plan provisions for certain Academic Medical Center Teaching Hospital projects that serve~~ Serves as a primary teaching site for a school of medicine and at least one other health professional school, providing undergraduate, graduate and postgraduate education.
    - (ii) ~~(B)Exemption from provisions of 10 NCAC 3R .3030 shall be granted to projects submitted by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990 and houses~~ Houses extensive basic medical science and clinical research programs, patients and ~~equipment, equipment,~~ equipment, and which projects comply with one of the following conditions.
    - (iii) Serves the treatment needs of patients from a broad geographic area through multiple medical specialties.
  - (B) Exemption from the provisions of 10 NCAC 3R .3030 shall be granted to projects submitted by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990 which projects comply with one of the following conditions:
    - (i) Necessary to complement a specified and approved expansion of the number of or types of students, residents or faculty, as certified by the head of the relevant associated professional school; or
    - (ii) Necessary to accommodate patients, staff or equipment for a specified and approved expansion of research activities, as certified by the head of the entity sponsoring the research; or

- (iii) Necessary to accommodate changes in requirements of specialty education accrediting bodies, as evidenced by copies of documents issued by such bodies.
- ~~(C) Serves the treatment needs of patients from a broad geographic area through multiple medical specialties~~
- (4) Reconversion to Acute Care. Facilities redistributing beds from acute care bed capacity to rehabilitation or psychiatric use shall obtain a certificate of need to convert this capacity back to acute care. Application for such reconversion to acute care of beds converted to psychiatry or rehabilitation shall be evaluated against the hospital's utilization in relation to target occupancies used in determining need shown in 10 NCAC 3R .3030 without regard to the acute care bed need shown in the Rule. These target occupancies are:

Licensed Bed Capacity	Percent Occupancy
1 - 49	65
50 - 99	70
100 - 199	75
200 - 699	80
700 +	81.5

- (5) Multi-Specialty Ambulatory Surgery. After applying other required criteria, when superiority among two or more competing ambulatory surgical facility certificate of need applications is uncertain, favorable consideration shall be given to "multi-specialty programs" over "specialty programs" in areas where need is demonstrated in 10 NCAC 3R .3030. A multi-specialty ambulatory surgical program means a program providing services in at least three of the following areas; gynecology, otolaryngology, plastic surgery, general surgery, ophthalmology, orthopedics, urology, and oral surgery. An ambulatory surgical facility shall provide at least two designated operating rooms with general anesthesia capabilities, and at least one designated recovery room.
- (6) Distribution of Inpatient Rehabilitation Beds. After applying other required criteria, when superiority among two or more competing rehabilitation facility certificate of need applications is uncertain, favorable consideration shall be given to proposals that make rehabilitation services more accessible to patients and their families or are part of a comprehensive regional rehabilitation network.
- (7) Replacement of Acute Care Bed Capacity. The evaluation of proposals for either partial or total replacement of an acute care hospital shall be evaluated against the utilization of the total number of acute care beds in the applicant's hospital service system in relation to the target occupancy of the total number of beds in that hospital service system which is determined as follows:

<u>Total Licensed Acute Care Beds</u>	<u>Target Occupancy (Percent)</u>
<u>1 - 49</u>	<u>65%</u>
<u>50 - 99</u>	<u>70%</u>
<u>100 - 199</u>	<u>75%</u>
<u>200 - 699</u>	<u>80%</u>
<u>700 +</u>	<u>81.5%</u>

- (8) Outpatient and Home Care. Rehabilitation care which can be provided in an outpatient or home setting shall be provided in these settings unless it has been determined by an appropriate utilization program that inpatient care is necessary. All new inpatient rehabilitation programs are required to provide comprehensive outpatient rehabilitation services as part of their service delivery programs.
- (b) LONG-TERM CARE FACILITIES AND SERVICES.

- (1) Provision of Hospital-Based Long-Term Nursing Care. A certificate of need may be issued to a hospital which is licensed under G.S. 131E, Article 5, and which meets the conditions set forth below and other relevant rules to convert up to ten beds from its licensed acute care bed capacity for use as hospital-based long-term nursing care beds without regard to determinations of need in 10 NCAC 3R .3030 if the hospital:

- (A) is located in a county which was designated as non-metropolitan by the U. S. Office of Management and Budget on January 1, ~~1996~~ 1997; and
- (B) on January 1, ~~1996~~ 1997, had a licensed acute care bed capacity of 150 beds or less.

The certificate of need shall remain in force as long as the Department of Human Resources determines that the hospital is meeting the conditions outlined in this Rule.

"Hospital-based long-term nursing care" is defined as long-term nursing care provided to a patient who has been directly discharged from an acute care bed and cannot be immediately placed in a licensed nursing facility because of the unavailability of a bed appropriate for the individual's needs. Determination of the patient's need for hospital-based long-term nursing care shall be made in accordance with criteria and procedures for determining



need for long-term nursing care administered by the Division of Medical Assistance and the Medicare program. Beds developed under this Rule are intended to provide placement for residents only when placement in other long-term care beds is unavailable in the geographic area. Hospitals which develop beds under this Rule shall discharge patients to other nursing facilities with available beds in the geographic area as soon as possible where appropriate and permissible under applicable law. Necessary documentation including copies of physician referral forms (FL 2) on all patients in hospital-based nursing units shall be made available for review upon request by duly authorized representatives of licensed nursing facilities.

For purposes of this rule, beds in hospital-based long-term nursing care shall be certified as a "distinct part" as defined by the Health Care Financing Administration. Beds in a "distinct part" shall be converted from the existing licensed bed capacity of the hospital and shall not be reconverted to any other category or type of bed without a certificate of need.

An application for a certificate of need for reconverting beds to acute care shall be evaluated against the hospital's service needs utilizing target occupancies shown in 10 NCAC 3R .3050(a)(4), without regard to the acute care bed need shown in 10 NCAC 3R .3030. A certificate of need issued for a hospital-based long-term nursing care unit shall remain in force as long as the following conditions are met:

- (i) the beds shall be certified for participation in the Title XVIII (Medicare) and Title XIX (Medicaid) Programs;
- (ii) the hospital discharges residents to other nursing facilities in the geographic area with available beds when such discharge is appropriate and permissible under applicable law;
- (iii) patients admitted shall have been acutely ill inpatients of an acute hospital or its satellites immediately preceding placement in the unit.

The granting of beds for hospital-based long-term nursing care shall not allow a hospital to convert additional beds without first obtaining a certificate of need. Where any hospital, or the parent corporation or entity of such hospital, any subsidiary corporation or entity of such hospital, or any corporation or entity related to or affiliated with such hospital by common ownership, control or management:

- (I) applies for and receives a certificate of need for long-term care bed need determinations in 10 NCAC 3R .3030; or
- (II) currently has nursing home beds licensed as a part of the hospital under G.S. 131E, Article 5; or
- (III) currently operates long-term care beds under the Federal Swing Bed Program (P.L. 96-499), such hospital shall not be eligible to apply for a certificate of need for hospital-based long-term care nursing beds under this Rule. Hospitals designated by the State of North Carolina as Rural Primary Care Hospitals pursuant to section 1820(f) of the Social Security Act, as amended, which have not been allocated long-term care beds under provisions of G.S. 131E-175 through 131E-190 may apply to develop beds under this Rule. However, such hospitals shall not develop long-term care beds both to meet needs determined in 10 NCAC 3R .3030 and this Rule. Beds certified as a "distinct part" under this Rule shall be counted in the inventory of existing long-term care beds and used in the calculation of unmet long-term care bed need for the general population of a planning area. Applications for certificates of need pursuant to this Rule shall be accepted only for the ~~March~~ February 1 review cycle. Beds awarded under this Rule shall be deducted from need determinations for the county as shown in 10 NCAC 3R .3030. Continuation of this Rule shall be reviewed and approved by the Department of Human Resources annually. Certificates of need issued under policies analogous to this Rule in State Medical Facilities Plans subsequent to the 1986 Plan are automatically amended to conform with the provisions of this Rule at the effective date of this Rule. The Department of Human Resources shall monitor this program and ensure that patients affected by this Rule are receiving appropriate services, and that conditions under which the certificate of need was granted are being met.

(2) Plan Exemption for Continuing Care Facilities.

(A) Qualified continuing care facilities may include from the outset, or add or convert bed capacity for long-term nursing care without regard to the bed need shown in 10 NCAC 3R .3030. To qualify for such exemption, applications for certificates of need shall show that the proposed long-term nursing bed capacity:

- (i) Will only be developed concurrently with, or subsequent to construction on the same site, of facilities for both of the following levels of care:
  - (I) independent living accommodations (apartments and homes) for persons who are able to carry out normal activities of daily living without assistance; such accommodations may be in the form of apartments, flats, houses, cottages, and rooms within a suitable structure;

- (II) domiciliary care (~~home for the aged~~) adult care beds beds for use by persons who, because of age or disability require some personal services, incidental medical services, and room and board to assure their safety and comfort.
- (ii) Will be used exclusively to meet the needs of persons with whom the facility has continuing care contracts (in compliance with the Department of Insurance statutes and rules) who have lived in a non-nursing unit of the continuing care facility for a period of at least 30 days. Exceptions shall be allowed when one spouse or sibling is admitted to the nursing unit at the time the other spouse or sibling moves into a non-nursing unit, or when the medical condition requiring nursing care was not known to exist or be imminent when the individual became a party to the continuing care contract. Financial consideration paid by persons purchasing a continuing care contract shall be equitable between persons entering at the "independent living" and "domiciliary" levels of care.
- (iii) Reflects the number of beds required to meet the current or projected needs of residents with whom the facility has an agreement to provide continuing care, after making use of all feasible alternatives to institutional nursing care.
- (iv) Will not be certified for participation in the Medicaid program.
- (B) One half of the long-term nursing beds developed under this exemption shall be excluded from the inventory used to project bed need for the general population. Certificates of need issued under policies analogous to this Rule in State Medical Facilities Plans subsequent to the 1985 SMFP are automatically amended to conform with the provisions of this Rule at the effective date of this Rule. Certificates of need awarded pursuant to the provisions of Chapter 920, Session Laws 1983, or Chapter 445, Session Laws 1985 shall not be amended.
- (3) Development of Home Health Services. After applying other required criteria, when superiority among two or more competing home health agency or office certificate of need applications is uncertain, favorable consideration shall be given to proposals which:
  - (A) provide an expanded scope of services (including nursing, physical therapy, speech therapy, and home health aide service);
  - (B) provide the widest range of treatments within a given service;
  - (C) have the ability to offer services on a seven days per week basis as required to meet patient needs; and
  - (D) provide specialized services to address the needs of at least one of the following groups: nursing home patients in transition to the community, HIV/AIDS patients, Alzheimer's Disease/senile dementia patients, or underserved patients in rural counties.
- (4) Need Determination Upon Termination of County's Sole Home Health Agency. When a home health agency's board of directors, or in the case of a public agency, the responsible public body, votes to discontinue the agency's provision of home health services; and
  - (A) the agency is the only home health agency with an office physically located in the county; and
  - (B) the agency is not being lawfully transferred to another entity;
 need for a new home health agency or office in the county is thereby established through this Rule. Following receipt of written notice of such decision from the home health agency's chief administrative officer, the Certificate of Need Section shall give public notice of the need for one home health agency or office in the county, and the dates of the review of applications to meet the need. Such notice shall be given no less than 45 days prior to the final date for receipt of applications in a newspaper serving the county and to home health agencies located outside the county reporting serving county patients in the most recent licensure applications on file.
- (5) Availability of Dialysis Care. After applying other required criteria, when superiority among two or more competing dialysis facility or station certificate of need applications is uncertain, favorable consideration shall be given to applicants proposing to provide or arrange for:
  - (A) home training and backup for patients suitable for home dialysis in the ESRD dialysis facility or in a facility that is a reasonable distance from the patient's residence;
  - (B) ESRD dialysis service availability at times that do not interfere with ESRD patients' work schedules;
  - (C) services in rural, remote areas.
- (6) Determination of Need for Additional Nursing Beds in Single Provider Counties. When a long-term care facility with fewer than 80 nursing care beds is the only nursing care facility within a county, it may apply for a certificate of need for additional nursing beds in order to bring the minimum number of beds available within the county to no more than 80 nursing beds without regard to the nursing bed need determination for that county as listed in 10 NCAC 3R .3030.
- (7) Relocation of Certain Nursing Facility Beds.
  - (A) A certificate of need to relocate existing licensed nursing facility beds to another county(ies) may be issued to a facility licensed as a nursing facility under G.S. 131E, Article 6, Part A, provided that the conditions

set forth below and in 10 NCAC 3R .1100 and the review criteria in G.S. 131E-183(a) are met. A facility applying for a certificate of need to relocate nursing facility beds shall demonstrate that:

- (i) it is a non-profit nursing facility supported by and directly affiliated with a particular religion and that it is the only nursing facility in North Carolina supported by and affiliated with that religion;
- (ii) the primary purpose for the nursing facility's existence is to provide long-term care to followers of the specified religion in an environment which emphasizes religious customs, ceremonies, and practices;
- (iii) relocation of the nursing facility beds to one or more sites is necessary to more effectively provide long-term nursing care to followers of the specified religion in an environment which emphasizes religious customs, ceremonies, and practices;
- (iv) the nursing facility is expected to serve followers of the specified religion from a multi-county area; and
- (v) the needs of the population presently served shall be met adequately pursuant to G.S. 131E-183.

(B) Exemption from the provisions of 10 NCAC 3R .3030 shall be granted to a nursing facility for purposes of relocating existing licensed nursing beds to another county provided that it complies with all of the criteria listed in Subpart (b)(7)(A)(i) - (v) of this Rule.

(C) Any certificate of need issued under this policy shall be subject to the following conditions:

- (i) the nursing facility shall relocate beds in at least two stages over a period of at least six months; and
- (ii) the nursing facility shall provide a letter to the Medical Facilities Licensure Section, on or before the date that the first group of beds are relocated, irrevocably committing the facility to relocate all of the nursing facility beds for which it has a certificate of need to relocate; and
- (iii) subsequent to providing the letter to the Medical Facilities Licensure Section described in Subpart (b)(7)(C)(ii) of this Rule, the nursing facility shall accept no new patients in the beds which are being relocated, except new patients who, prior to admission, indicate their desire to transfer to the facility's new location(s).

(8) Relocation of Dialysis Stations. Relocations of existing dialysis stations are allowed only within the host county and to contiguous counties currently served by the facility. Certificate of need applicants proposing to relocate dialysis stations shall:

(A) demonstrate that the proposal shall not result in a deficit in the number of dialysis stations in the county that would be losing stations as a result of the proposed project, as reflected in the most recent Semiannual Dialysis Report; and

(B) demonstrate that the proposal shall not result in a surplus of dialysis stations in the county that would gain stations as a result of the proposed project, as reflected in the most recent Semiannual Dialysis Report.

(c) **MENTAL HEALTH FACILITIES AND SERVICES.**

~~(1) Appropriate Provision of Care. Hospitalization shall be considered the most restrictive form of therapeutic intervention or treatment and shall be used only when this level of 24 hour care and supervision is required to meet the patient's health care needs.~~

~~(1) (2) Linkages Between Treatment Settings. Anyone An applicant applying for a certificate of need for psychiatric, ICF/MR or substance abuse beds shall document that the affected area mental health, developmental disabilities and substance abuse authorities have been contacted and invited to comment on the proposed services, services, relative to their endorsement of the project and involvement in the development of a client admission and discharge agreement.~~

~~(2) (3) Transfer of Beds from State Psychiatric Hospitals to Community Facilities. Beds in the State psychiatric hospitals used to serve short-term psychiatric patients may be relocated to community facilities. However, before beds are transferred out of the State psychiatric hospitals, appropriate services and programs shall be available in the community, community. The process of transferring beds shall not result in a net change in the number of psychiatric beds available, but rather in the location of beds counted in the existing inventory. State hospital beds which are relocated to community facilities shall be closed within ninety days following the date the transferred beds become operational in the community. Facilities proposing to operate transferred beds shall commit to serve the type of short-term patients normally placed at the State psychiatric hospitals. To help ensure that relocated beds will serve those persons who would have been served by the State psychiatric hospitals, a proposal to transfer beds from a State hospital shall include a written memorandum of agreement between the area MH/DD/SAS program serving the county where the beds are to be located, the Secretary of Human Resources, and the person submitting the proposal.~~

~~(3) Allocation of Psychiatric Beds. A hospital submitting a Certificate of Need application to add inpatient psychiatric beds shall convert excess licensed acute care beds to psychiatric beds. In determining excess licensed acute care beds, the hospital shall subtract the average occupancy rate for its licensed acute care beds over the previous 12-~~

month period from the appropriate target occupancy rate for acute care beds listed in 10 NCAC 3R .3050(a)(4) and multiply the difference by the number of its existing licensed acute care beds.

- ~~(4) Inpatient Psychiatric Services for Children and Adolescents. Inpatient psychiatric treatment of children and adolescents which is more extensive than stabilization shall occur in units which are separate and distinct from both adult psychiatric units and general pediatric units. In order to maximize efficiency and ensure the availability of a continuum of care, psychiatric beds for children and adolescents shall be developed in conjunction with outpatient treatment programs.~~
- ~~(5) Involuntarily Committed Patients. All certificate of need applications for psychiatric beds shall indicate the proponents' willingness to be designated to serve involuntarily committed patients.~~
- ~~(6) Substance Abuse Programs to Treat Adolescents. Adolescents shall receive substance abuse treatment services that are distinct from services provided to adults.~~
- ~~(4) (7) Determination of Intermediate Care Bed Need for Mentally Retarded/ Developmentally Disabled Persons. After applying other required criteria, when superiority among two or more competing ICF/MR certificate of need applications is uncertain, favorable consideration shall be given to counties that do not have ICF/MR group homes when such counties are part of a multi-county area for which a need is shown in 10 NCAC 3R .3030.~~
- ~~(8) Transfer of Beds from State Mental Retardation Centers. Facilities proposing to transfer ICF/MR beds from State mental retardation centers to communities shall demonstrate that they are committed to serving the same type of residents normally served in the State mental retardation centers. To ensure that relocated beds will serve those persons, any certificate of need application proposing to transfer beds under this rule must meet the requirements of Chapter 858 of the 1983 Session Laws. The application for transferred beds shall include a written agreement by the applicant with the following representatives which outlines the operational aspects of the bed transfers: Director of the Area MH/DD/SAS Program serving the county where the program is to be located; the Director of the applicable State Mental Retardation Center; the Chief of Developmental Disability Services in the DMH/DD/SAS; and the Secretary of the Department of Human Resources.~~
- ~~(9) Allocation of Delicensed and Decertified ICF/MR Beds. ICF/MR beds located in facilities in which the license has been relinquished or revoked, and certification to participate in the Medicaid Program has been relinquished or revoked, shall be retained in the ICF/MR bed inventory and allocated in the same Mental Health Planning Region as one bed additions to existing five bed ICF/MR group homes. The determination of the Mental Health Planning Area(s) to which the beds will be allocated will be made by the Regional Team of Developmental Disabilities Services Directors of the Area Mental Health Offices in the affected Planning Region. In the event that there are no more five bed ICF/MR facilities in the affected planning region, the Developmental Disabilities Section of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services will recommend allocation of the beds in another Planning Region in which one bed additions are needed to existing five bed facilities. Following this determination, the Certificate of Need Section will schedule reviews for these reallocations in accordance with 10 NCAC 3R .3040.~~

Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

## TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Environmental Management Commission intends to amend rule cited as 15A NCAC 2Q .0102 with changes from the proposed text noticed in the Register, Volume 10, Issue 16B, pages 1904 - 1908. **Note:** The text in **BOLD** is the new proposed language. Other proposed language is the same as previously published in the North Carolina Register Volume 10 Issue 16B pages 1904-1908.

**Proposed Effective Date:** November 1, 1996.

**Reason for Proposed Action:** To receive additional comment on the proposed permit exemptions as brought to

public hearing on December 19, 1995. The version of 15A NCAC 2Q .0102 that was brought to public hearing was incorrect; the Environmental Management Commission (EMC) had approved a different version. The EMC approved version contains additional permit exemptions. Because of the incorrect version being printed and the number of comments received during the original hearing process, the Hearing Officer recommends that the comment period be extended for this rule to receive additional relevant comment. Therefore, the comment period is proposed to be re-opened for 30 days ending on July 15, 1996.

**Comment Procedures:** All persons interested in these matters are invited to submit written comments. The Hearing Record will remain open until July 15, 1996, to receive additional written statements. Comments should be sent to and additional information concerning the continu-

ance of the public comment period or the proposals may be obtained by contacting: Mr. Thomas C. Allen, Division of Environmental Management, PO Box 29580, Raleigh, NC 27626-0580, (919) 733-1489 (phone), (919) 715-7476 (fax).

**Editor's Note:** An agency may not adopt a rule that differs substantially from the text of a proposed rule published in the *Register*, unless the agency publishes the text of the proposed different rule and accepts comments on the new text.

**Fiscal Note:** This Rule does not affect the expenditures or revenues of state or local government funds.

## CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

### SUBCHAPTER 2Q - AIR QUALITY PERMIT PROCEDURES

#### SECTION .0100 - GENERAL PROVISIONS

##### .0102 ACTIVITIES EXEMPTED FROM PERMIT REQUIREMENTS

(a) If a source is subject to any of the following rules, then the source is not exempted from permit requirements, and the exemptions in Paragraph (b) of this Rule do not apply:

- (1) new source performance standards under 15A NCAC 2D .0524 or 40 CFR Part 60, except:  
~~except new residential wood heaters;~~  
 (A) 40 CFR Part 60, Subpart Dc, industrial, commercial, and institutional steam generating units;  
 (B) 40 CFR Part 60, Subpart Kb, volatile organic liquid storage vessels; or  
 (C) 40 CFR Part 60, Subpart AAA, new residential wood heaters;
- (2) national emission standards for hazardous air pollutants under 15A NCAC 2D .1110 .0525 or 40 CFR Part 61, except asbestos demolition and renovation activities;
- (3) prevention of significant deterioration under 15A NCAC 2D .0530;
- (4) new source review under 15A NCAC 2D .0531 or .0532;
- (5) sources of volatile organic compounds subject to the requirements of 15A NCAC 2D .0900 that are located in Mecklenburg County in accordance with 15A NCAC 2D .0902; and Gaston Counties;
- (6) sources required to apply maximum achievable control technology (MACT) for hazardous air pollutants under 15A NCAC 2D .1109 or ~~under .1111 or 40 CFR Part 63 that are required to have a permit under Section .0500 of this Subchapter; or to apply generally available control technology (GACT) or work practice~~

~~standards for hazardous air pollutants under 40 CFR Part 63, or~~

- (7) sources at facilities subject to 15A NCAC 2D .1100. (If a source does not emit a toxic air pollutant for which the facility at which it is located has been evaluated, it shall be exempted from needing a permit if it qualifies for one of the exemptions in Paragraph (b) of this Rule.)

(b) The following activities do not need a permit or permit modification under this Subchapter; however, the Director may require the owner or operator of these activities to register them under 15A NCAC 2D .0200:

- (1) activities exempted because of category (These activities shall not be included on the permit application or in the permit.):

(A) maintenance, upkeep, and replacement:

- (i) maintenance, structural changes, or repairs which do not change the capacity of such process, fuel-burning, refuse-burning, or control equipment, and do not involve any change in quality or nature or increase in quantity of emission of regulated air pollutants;
- (ii) housekeeping activities or building maintenance procedures, including painting buildings, resurfacing floors, roof repair, washing, portable vacuum cleaners, sweeping, use and associated storage of janitorial products, or insulation removal;
- (iii) use of office supplies, supplies to maintain copying equipment, or blueprint machines,
- (iv) use of fire fighting equipment;
- (v) paving parking lots; or
- (vi) replacement of existing equipment with equipment of the same size, type, and function that does not result in an increase to the actual or potential emission of regulated air pollutants and that does not affect the compliance status, and with replacement equipment that fits the description of the existing equipment in the permit, including the application, such that the replacement equipment can be operated under that permit without any changes in the permit;

(B) air conditioning or ventilation: comfort air conditioning or comfort ventilating systems which do not transport, remove, or exhaust regulated air pollutants to the atmosphere;

(C) laboratory equipment activities:

- (i) bench-scale, on-site laboratory equipment used exclusively for

- chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;
- (ii) bench-scale experimentation, chemical or physical analyses, training or instruction from not-for-profit, non-production educational laboratories; non-production laboratory equipment used at non-profit health or non-profit educational institutions for chemical or physical analyses, bench scale experimentation or training, or instruction; or
- (iii) bench-scale experimentation, chemical or physical analyses, training or instruction from hospitals or health laboratories pursuant to the determination or diagnoses of illnesses; or laboratory equipment used for chemical or physical analysis for bench scale experimentation, training, instruction, or research and development that is not required to be permitted under Section .0500 of this Subchapter;
- (iv) research and development laboratory activities that are not required to be permitted under Section .0500 of this Subchapter provided the activity produces no commercial product or feedstock material;
- (D) storage tanks:
- (i) storage tanks used solely to store fuel oils, kerosene, diesel, crude oil, used motor oil, lubricants, cooling oils, natural gas, gas or liquefied petroleum gas;
- (ii) storage tanks used to store gasoline for which there are no applicable requirements except Stage I controls under 15A NCAC 2D .0928;
- (iii) storage tanks used solely to store inorganic liquids; or
- (iv) storage tanks or vessels used for the temporary containment of materials resulting from an emergency response to an unanticipated release of hazardous materials;
- (E) combustion and heat transfer equipment:
- (i) space heaters burning distillate oil, kerosene, natural gas, or liquefied petroleum gas operating by direct heat transfer and used solely for comfort heat;
- (ii) residential wood stoves, heaters, or fireplaces;
- (iii) hot water heaters which are used for domestic purposes only and are not used to heat process water;
- (F) wastewater treatment processes: industrial wastewater treatment processes or municipal wastewater treatment processes for which there are no applicable requirements;
- (G) gasoline distribution:
- (i) gasoline service stations or gasoline dispensing facilities that are not required to be permitted under Section .0500 of this Subchapter; or
- (ii) gasoline dispensing equipment at facilities required to be permitted under Section .0500 of this Subchapter if the equipment is used solely to refuel facility equipment;
- (H) dispensing equipment: equipment used solely to dispense diesel fuel, kerosene, lubricants or cooling oils;
- (I) solvent recycling: portable solvent distillation systems used for on-site solvent recycling if:
- (i) The portable solvent distillation system is not:
- (I) owned by the facility, and
- (II) operated at the facility for more than seven consecutive days;
- (ii) The material recycled is:
- (I) recycled at the site of origin,
- (II) the original material is non-photochemically reactive in accordance with 15A NCAC 2D .0518, Miscellaneous Volatile Organic Compound Emissions, and
- (III) all make up material is non-photochemically reactive in accordance with 15A NCAC 2D .0518;
- (J) processes:
- (i) small electric motor burn-out ovens with secondary combustion chambers or afterburners;
- (ii) small electric motor bake-on ovens;
- (iii) burn-off ovens for paint-line hangers with afterburners;
- (iv) hosiery knitting machines and associated lint screens, hosiery dryers and associated lint screens, and hosiery dyeing processes where bleach or solvent dyes are not used;
- (v) blade wood planers planing only green wood;

(K) ~~(H)~~ miscellaneous:

- (i) motor vehicles, aircraft, marine vessels, locomotives, tractors or other self-propelled vehicles with internal combustion engines;
- (ii) non-self-propelled non-road engines, except generators, regulated by rules adopted under Title II of the federal Clean Air Act;
- (iii) ~~(ii)~~ equipment used for the preparation of food for direct on-site human consumption;
- (iv) ~~(iii)~~ a source whose emissions are regulated only under Section 112(r) or Title VI of the federal Clean Air Act that is not required to be permitted under Section .0500 of this Subchapter;
- (v) ~~(iv)~~ exit gases from in-line process analyzers;
- (vi) ~~(v)~~ stacks or vents to prevent escape of sewer gases from domestic waste through plumbing traps;
- (vii) ~~(vi)~~ refrigeration equipment that is consistent with Section 601 through 618 of Title VI (Stratospheric Ozone Protection) of the federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA under Title VI for stratospheric ozone protection, except those units used as or in conjunction with air pollution control equipment;
- (viii) ~~(vii)~~ equipment not vented to the outdoor atmosphere with the exception of equipment that emits volatile organic compounds;
- (ix) ~~(viii)~~ equipment that does not emit any regulated air pollutants; ~~or~~
- (x) facilities subject only to a requirement under 40 CFR Part 63 that are not required to be permitted under Section .0500 of this Subchapter (This Subpart does not apply when a control device is used to meet a MACT or GACT emission standard.); or
- (xi) ~~(ix)~~ sources for which there are no applicable requirements and that are at a facility not required to be permitted under Section .0500 of this Subchapter.

- (2) activities exempted because of size or production rate (These activities shall not be included in the permit. If the facility is subject to the permitting procedures under Section .0500 of this Subchapter, these activities shall be listed on the permit

applications; otherwise, these activities shall not be listed on the permit applications.):

(A) storage tanks:

- (i) above-ground storage tanks with a storage capacity of no more than 1100 gallons storing organic liquids ~~liquids, excluding hazardous air pollutants,~~ with a true vapor pressure of no more than 10.8 pounds per square inch absolute at 70°F; or
- (ii) underground storage tanks with a storage capacity of no more than 2500 gallons storing organic liquids ~~liquids, excluding hazardous air pollutants,~~ with a true vapor pressure of no more than 10.8 psi absolute at 70°F;

(B) combustion and heat transfer equipment:

- (i) fuel combustion equipment, except for internal combustion engines, firing exclusively kerosene, No. 1 fuel oil, No. 2 fuel oil, equivalent unadulterated fuels, or a mixture of these fuels or one or more of these fuels mixed of with natural gas or liquefied petroleum gas with a heat input of less than:

(I) 10 million BTU per hour for which construction, modification, or reconstruction commenced after June 9, 1989; or

(II) 30 million BTU per hour for which construction, modification, or reconstruction commenced before June 10, 1989;

~~fuel combustion equipment, except for internal combustion engines, for which construction, modification, or reconstruction commenced after June 9, 1989, firing exclusively kerosene, No. 1 fuel oil, No. 2 fuel oil, equivalent unadulterated fuels, natural gas, liquefied petroleum gas, or a mixture of these fuels with a heat input rating less than 10 million BTU per hour;~~

- (ii) fuel combustion equipment, except for internal combustion engines, firing exclusively natural gas or liquefied petroleum gas or a mixture of these fuels with a heat input rating less than 65 million BTU per hour;

~~fuel combustion equipment, except for internal combustion engines,~~



~~for which construction, modification, or reconstruction commenced before June 10, 1989, firing exclusively:~~

- ~~(I) kerosene, No. 1 fuel oil, No. 2 fuel oil, equivalent unadulterated fuels, or a mixture of these fuels with gaseous fuels with a heat input rating less than 30 million BTU per hour;~~
- ~~(II) natural gas or liquefied petroleum gas with a heat input rating less than 65 million BTU per hour;~~
- (iii) space heaters burning waste oil if:
  - (I) The heater burns only oil that the owner or operator generates or used oil from do-it-yourself oil changers who generate used oil as household wastes;
  - (II) The heater is designed to have a maximum capacity of not more than 500,000 Btu per hour; and
  - (III) The combustion gases from the heater are vented to the ambient air;
- (iv) emergency use generators and other internal combustion engines not regulated by rules adopted under Title II of the federal Clean Air Act, except self-propelled vehicles, that have a rated capacity of no more than:
  - (I) 310 kilowatts (electric) or 460 horsepower for natural gas-fired engines,
  - (II) 830 kilowatts (electric) or 1150 horsepower for liquefied petroleum gas-fired engines, ~~or~~
  - (III) 270 kilowatts (electric) or 410 horsepower for diesel-fired or kerosene-fired engines; engines, or
  - (IV) 21 kilowatts (electric) or 31 horsepower for gasoline-fired engines;
- (v) portable generators and other portable equipment with internal combustion engines not regulated by rules adopted under Title II of the federal Clean Air Act, except self-propelled vehicles, that operate at the facility no more than a combined 350 hours

for any 365-day period provided the generators or engines have a rated capacity of no more than 750 kilowatt (electric) or 1100 horsepower each and provided records are maintained to verify the hours of operation;

- (vi) peak shaving generators that produce no more than 325,000 kilowatt-hours of electrical energy for any 12-month period provided records are maintained to verify the energy production on a monthly basis and on a 12-month basis;
- (C) gasoline distribution: bulk gasoline plants with an average daily throughput of less than 4000 gallons that is not required to be permitted under Section .0500 of this Subchapter;
- (D) processes:
  - (i) printing, paint spray booths or other painting or coating operations without air pollution control devices (water wash and filters that are an integral part of the paint spray booth are not considered air pollution control devices) located at a facility whose facility-wide actual emissions of:
    - (I) ~~(i)~~ Volatile organic compounds are less than five tons per year, and
    - (II) ~~(ii)~~ Photochemically reactive solvent emissions under 15A NCAC 2D .0518 are less than ~~40~~ 30 pounds per day; provided the facility is not required to be permitted under Section .0500 of this ~~Subchapter~~ Subchapter;
  - (ii) saw mills that saw no more than 2,000,000 board feet per year provided only green wood is sawed;
  - (iii) perchloroethylene dry cleaners that consume less than 13,000 pounds (965 gallons) of perchloroethylene per year;
  - (iv) electrostatic dry powder coating operations equipped with powder recovery including curing ovens with a heat input of less than 10,000,000 BTU per hour;
- (E) miscellaneous:
  - (i) any source without an air pollution control device whose potential emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic



compounds, and carbon monoxide are each no more than five tons per year and whose potential emissions of hazardous air pollutants are below their lesser quantity cutoff with a potential to emit no more than five tons per year of each regulated pollutant that is not a hazardous air pollutant and whose emissions would not violate any applicable emissions standard and whose emissions of all hazardous air pollutants are below their respective lesser quality cutoff emission rates in 40 CFR Part 63; except:

- (I) storage tanks,
- (II) fuel combustion equipment firing exclusively kerosene, No. 1 fuel oil, No. 2 fuel oil, equivalent unadulterated fuels, natural gas, liquefied petroleum gas, or a mixture of these fuels,
- (III) space heaters burning waste oil,
- (IV) generators generators, excluding emergency generators, or other non-self-propelled internal combustion engines,
- (V) bulk gasoline plants,
- (VI) printing, paint spray booths, or other painting or coating operations,
- (VII) saw mills,
- (VIII) perchloroethylene dry cleaners, or
- (IX) electrostatic dry powder coating operations,  
provided that the total potential emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide from the facility are each less than 40 tons per year and the total potential emissions of all hazardous air pollutants are below their lesser quantity cutoff emission rates or provided that the facility has an air quality permit;
- (ii) any facility without an air pollution control device whose actual emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, or carbon monoxide are each less than five tons per year, whose potential emissions of all

hazardous air pollutants are below their respective lesser quality quantity cutoff emission rates in 40 CFR Part 63, and which is not required to have a permit under Section .0500 of this Subchapter;

- (iii) emissions of any hazardous air pollutant where the emissions from the facility of that hazardous air pollutant is below its lesser quality cutoff emission rate in 40 CFR Part 63 any source that only emits hazardous air pollutants that are not also a particulate or a volatile organic compound and whose potential emissions of hazardous air pollutants are below their lesser quantity cutoff emission rates; or
- (iv) electrostatic dry powder coating operations equipped with powder recovery including curing ovens with a heat input of less than 10,000,000 BTU per hour; or
- (iv) ~~(v)~~ any incinerator covered under Paragraph (d) of 15A NCAC 2D .1201.
- (F) case-by-case exemption: activities that the applicant demonstrates to the satisfaction of the Director to be negligible in their air quality impacts, not to have any air pollution control device, and not to violate any applicable emission control standard when operating at maximum design capacity or maximum operating rate, whichever is greater.
- (c) Because an activity is exempted from being required to have a permit does not mean that the activity is exempted from any applicable requirement or that the owner or operator of the source is exempted from demonstrating compliance with any applicable requirement.
- (d) Emissions from stationary source activities identified in Paragraph (b) of this Rule shall be included in determining compliance with the toxic air pollutant requirements under 15A NCAC 2D .1100 or 2H .0610.
- (e) The owner or operator of a facility or source claiming an exemption under Paragraph (b) of this Rule shall provide the Director documentation upon request that the facility or source is qualified for that exemption.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.108.

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**N**otice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule(s) cited as 15A NCAC

10F .0303 and .0310. Text shown in italics as 15A NCAC 10F .0310(13) was previously noticed in Volume 11, Issue 1, of the Register.

**Proposed Effective Date:** March 2, 1997

**A Public Hearing** will be conducted at 10:00 a.m. on July 10, 1996 at the Archdale Building, Room 332, 512 N. Salisbury Street, Raleigh, NC 27604.

**Reason for Proposed Action:** To regulate boat speeds in congested areas

**Comment Procedures:** Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from June 14, 1996 through July 15, 1996. Such written comments must be delivered or mailed to the North Carolina Wildlife Resources Commission, 512 North Salisbury Street, Raleigh, North Carolina 27604-1188.

**Fiscal Note:** This Rule does not affect the expenditures or revenues of state or local government funds. These rules do not have substantial economic impact of at least five million dollars (\$5,000,000) in a 12-month period.

## CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

### SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

#### SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

##### .0303 BEAUFORT COUNTY

(a) Regulated Areas. This Rule applies to the following waters in Beaufort County:

- (1) that portion of Broad Creek bounded on the north by a line running due east and west across Broad Creek through a point 1400 feet due north of Red Marker No. 6, on the south by a line running east and west across Broad Creek through the location of Red Marker No. 4, on the east and west by the high-water mark on Broad Creek;
- (2) that portion of Blounts Creek 100 yards on either side of the SR 1112 Bridge;
- (3) that portion of Blounts Creek beginning 100 yards below the Old Crist Landing and extending upstream to the NC 33 bridge;
- (4) the waters of Battalina Creek, within the territorial limits of the Town of Belhaven;
- (5) the navigable portion of Nevils Creek extending upstream from its mouth at the Pamlico River; and
- (6) that portion of the Pamlico River within 50 yards either side of the US Highway 17 bridge and the

Norfolk Southern Railroad bridge and that portion lying within 50 yards of the northern Shoreline and within the city limits of Washington, North Carolina, connecting the two bridges and designated by appropriate ~~markers~~ markers; and

- (7) that portion of Blounts Creek beginning 50 yards on the south side and three hundred yards on the north side of the Blounts Creek Bridge.

(b) Speed Limit. It is unlawful to operate a vessel at greater than no-wake speed in the regulated areas described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Beaufort County and the City Council of the City of Washington are designated as suitable agencies for placement and maintenance of the markers implementing this Rule.

Authority G.S. 75A-3; 75A-15.

##### .0310 DARE COUNTY

(a) Regulated Areas. This Rule applies to the following waters and portions of waters:

- (1) Manteo. Doughs Creek adjacent to Shallowbag Bay and all canals situated within the territorial limits of the Town of Manteo.
- (2) Hatteras. The waters of Hatteras Harbor and Muddy Creek bounded on the north and south by the high-water mark, on the west by a straight line between channel markers number 20 and 17, and on the east by the mouth of Muddy Creek at Sandy Bay.
- (3) Mann's Harbor. The waters of Ferry Dock Road Canal.
- (4) Nags Head:
  - (A) Those waters contained within the canals of Old Nags Head Cove Development;
  - (B) The Roanoke Sound inlets at Pond Island on either side of Marina Drive extending north from US 64-264.
- (5) Wanchese:
  - (A) The waters of Wanchese Harbor;
  - (B) The Canal from its beginning where it connects with the Roanoke Sound south of the dead end road SR 1141 extending northwest roughly parallel to SR 1141 and SR 1142, then westward roughly parallel to NC 345, and finally curving to the southwest roughly parallel to the C.B. Daniels Road to its end.
- (6) Stumpy Point Canal. That portion of Stumpy Point Canal beginning at the Wildlife Resources Commission boating access area and extending inland for a distance of 3,600 feet.
- (7) Stumpy Point Basin. That portion of the Stumpy Point Basin, at the head of the Stumpy Point Bay, which is next to Highway 264 in the dock area and designated by the appropriate markers.

- (8) Town of Southern Shores. The waters contained in the canals and lagoons within the territorial limits of the Town of Southern Shores.
- (9) Colington Harbour. The waters contained in the canals of Colington Harbour.
- (10) Kitty Hawk. Those waters contained in the canals of Kitty Hawk Landing Subdivision.
- (11) Washington Baum Bridge. Those waters of the Roanoke Sound from marker 24B north of the bridge to marker 24A south of the bridge, and 50 yards east of the navigation span west to the shore as designated by the appropriate markers.
- (12) Colington Island. The waters contained in an area beginning at the bath house and recreation center on the western shore of Colington Island, running 600 feet in a northerly direction and extending 300 feet into Albemarle Sound as marked.

(13) The waters of Baum Bay Harbor.

(14) The waters of High Bridge Creek.

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within any of the regulated areas described in Paragraph (a) of this Rule.

(c) Restricted Swimming Area. No person operating or responsible for the operation of any vessel, surfboard, water skis, or jet skis shall permit the same to enter any marked swimming area described in Subparagraph (12) of Paragraph (a) of this Rule.

(d) Placement and Maintenance of Markers. Subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers, the following agencies are designated suitable agencies for placement and maintenance of markers implementing this Rule as to the regulated areas listed in the several Subparagraphs of Paragraph (a) of this Rule:

- (1) the Board of Commissioners of the Town of Manteo as to the areas indicated in Subparagraph (1);
- (2) the Board of Commissioners of Dare County as to the areas indicated in Subparagraphs (2) through (7), (9) and (11);
- (3) the Board of Commissioners of the Town of Southern Shores as to the areas indicated in Subparagraph (8);
- (4) the Board of Commissioners of the Town of Kitty Hawk as to the areas indicated in Subparagraph (a)(10).

Authority G.S. 75A-3; 75A-15.

\*\*\*\*\*

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNH - Commission for Health Services intends to adopt rules cited as 15A NCAC 13C .0301 - .0308.

Proposed Effective Date: April 1, 1997.

A Public Hearing will be conducted at 2:00 pm on July 1, 1996 at the Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC.

**Reason for Proposed Action:** *The Inactive Hazardous Sites Response Act was amended in the 1994 and 1995 legislative sessions to establish a mechanism for privatizing the State's oversight role at voluntary party cleanups. The amendments call for establishing rules to set up (1) standards applicable to the private overseers, (2) criteria for state approval of these overseers, (3) requirements for state auditing of the cleanup, (4) requirements for final assurances to be made by remediating parties and (5) requirements for maintenance of public records.*

**Comment Procedures:** *All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Leslie Brown, Assistant Director, Division of Health Promotion, Post Office Box 27687, Raleigh, NC, 27611-7687. All written comments must be received by August 1, 1996. Persons who wish to speak at the hearing should contact Mr. Brown at (919) 715-3105. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.*

*IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AN OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).*

**Fiscal Note:** *These Rules do not affect the expenditures or revenues of state or local government funds. These Rules do not have a substantial economic impact of at least five million dollars (\$5,000,000) in a 12-month period.*

## CHAPTER 13 - SOLID WASTE MANAGEMENT

### SUBCHAPTER 13C - INACTIVE HAZARDOUS SUBSTANCES AND WASTE DISPOSAL SITES

#### SECTION .0300 - VOLUNTARY REMEDIAL ACTION OVERSIGHT BY REGISTERED ENVIRONMENTAL CONSULTANTS

### .0301 DEFINITIONS

Any word or phrase used in these Rules which is defined in G.S. 130A, Article 9 shall have the meaning provided therein. The following words and phrases shall have the following meanings:

- (1) "Applicant" means an environmental consulting or engineering firm seeking Department approval to act as a Registered Environmental Consultant.
- (2) "Applicant RSM" means an individual proposed by an applicant to fill the role of Registered Site Manager.
- (3) "Registered Environmental Consultant" or "REC" means an environmental consulting or engineering firm approved to implement and oversee voluntary remedial actions pursuant to G.S. 130A-310.9(c).
- (4) "Registered Site Manager" or "RSM" means the key person or persons approved by the Division of Solid Waste Management to manage all site activities and make certifications on behalf of the Registered Environmental Consultant in its role as consultant to responsible parties for implementation and oversight of a voluntary remedial action pursuant to G.S. 130A-310.9(c).
- (5) "Remediating Party" means any site owner, operator, or responsible party engaging in a voluntary remedial action pursuant to G.S. 130A-310.9(c).
- (6) "Request for Approval" means the application and qualifications documentation package which must be submitted by an environmental consulting or engineering firm to the Department so that the Department may determine an applicant's eligibility to operate as a Registered Environmental Consultant. The Department will make available a format for submission of such information.
- (7) "Source Area" means any area of sludge, soil, sediment, or other solid medium contaminated by a release of one or more hazardous substances.
- (8) "Voluntary Remedial Action" is a remedial action as defined in G.S. 130A-310(7) conducted voluntarily by an owner, operator, or responsible party and undertaken with the approval of the Department pursuant to G.S. 130A-310.9(c).

*Authority G.S. 130A-310.12(b).*

### .0302 GENERAL PROVISIONS

(a) These are the rules required by G.S. 130A-310.12(b) to govern the selection and use of private environmental consulting and engineering firms to implement and oversee voluntary remedial actions by owners, operators, or other responsible parties under G.S. 130A-310.9(c).

(b) No provision of these Rules shall be construed to relieve any person of the necessity of complying with applicable federal, state or local laws.

(c) Any person who violates any provision of this

Section, or any other requirement in connection with the voluntary remedial action program, including making any false statement, representation or certification, or knowingly rendering inaccurate any recording or monitoring device or method, shall be subject to enforcement to the full extent of the law. Such enforcement may include, without limitation, disqualification as an REC or RSM and prosecution under G.S. 130A-26.2.

(d) A party wishing to conduct a voluntary remedial action must enter into a written agreement with the Department pursuant to G.S. 130A-310.9(c).

(e) For the purpose of administration and enforcement of the voluntary remedial action program and for protection of human health or the environment, employees, agents and contractors of the Department may enter any site, vessel or other location undergoing a voluntary remedial action pursuant to this Section, at reasonable times and upon reasonable notice, to investigate, sample or inspect any documents, conditions, equipment, practice or property. In the event that the Department reasonably determines as a result of an investigation, sampling or inspection that there has been a release or that there exists a threat of release of a hazardous substance, the Department may enter a site, vessel or location, and areas proximate thereto, and perform or arrange for the performance of such response actions as it reasonably deems necessary.

(f) Remedial Actions conducted pursuant to this Section must be overseen by an REC. All work performed by an REC must be under the supervision and direction of an RSM representing the REC. Rule .0306 of this Section specifies requirements relating to certifications by RSMs.

(g) The Department shall have complete discretion to effect cleanup itself, or directly oversee a remediating party's cleanup, if the Department determines that the site poses an imminent hazard, if there is significant public concern, if the Department has initiated an enforcement action, if the Department is concerned about material misrepresentations or environmental non-compliance on the part of a party seeking to effect or effecting remedial action at a site pursuant to this Section, if hazardous substances have migrated to adjoining property, or if other conditions, such as the presence of sensitive environments or mixed wastes (commingled radioactive and chemical wastes), so warrant.

(h) The remedial investigation must be completed within three years of the effective date of the agreement to conduct a voluntary remedial action. Non-groundwater remedial action must be completed within eight years of the effective date of that agreement. Groundwater remedial action must be initiated within two years of completion of the remedial investigation. Responsible parties failing to meet these deadlines will be subject to enforcement and loss of approved voluntary remedial action status. The affected sites will no longer be eligible for exemption from the Inactive Hazardous Waste Sites Priority List pursuant to G.S. 130A-310.9(b).

(i) Any information, document, or particular part thereof

obtained by the Department or its contractors upon request pursuant to this Section shall be confidential, and shall not be considered to be a public record, when it is determined by the Department that such information, if made public, would divulge a trade secret.

(j) The Department shall be under no obligation to act upon any request for confidentiality in relation to this Section that is not made and substantiated in accordance with G.S. 66, Article 24, and such information may be made available to the public by the Department without further notice to the remediating party.

(k) These Rules may not serve as grounds for refusal to disclose any information necessary for an enforcement or cost recovery action or to comply with any provision of law.

(l) The REC shall preserve and maintain all documents submitted to the REC on behalf of or by the remediating party, prepared by the REC, or within the REC's possession, custody or control, that in any way relate to work performed pursuant to these Rules including, but not limited to, documents of sufficient detail to substantiate the facts, data, conclusions and other information set forth in any REC opinion or certification. Such documents shall be kept at one or more locations reasonably accessible to the Department and in such a form as to enable the Department to ascertain whether the response actions which are the subject of the REC opinion or certification have been performed in compliance with the provisions of these voluntary remedial action Rules until such time as the record is provided to the Department for the public file. The REC shall submit to the Department for the public file all work plans, records, and reports within 30 days of their completion. The REC shall submit to the Department for the public file all site documents at the following milestones:

- (1) completion of each phase of the remedial investigation;
- (2) REC approval of cleanup levels;
- (3) completion of the remedial investigation;
- (4) at the close of the 30-day public comment period which follows notice of the proposed remedial action plan;
- (5) completion of remedial design and construction; and
- (6) completion of all remedial action activities.

(m) Any person required by Paragraph (l) of this Rule to preserve and maintain any documents shall preserve and maintain those documents for six years after termination of the remediating party's agreement with the Department to perform a voluntary remedial action pursuant to these Rules. With the Department's written approval, documents required to be maintained need no longer be maintained.

(n) Failure to comply with Department site-related requests for information will cause revocation of an REC's approval to perform work and disapproval of any work product in question. Remediating parties will lose their eligibility for the voluntary remedial action program unless, within 60 days of notice by the Department of revocation of the REC's approval, the name of a successor REC is

submitted to the Department. Program ineligibility will also result from failure by a remediating party to provide written notice to the Department within 60 days of a change in RECs for any other reason.

(o) Nothing in this Section shall be construed to limit the Department's authority to take or arrange, or to require a responsible party to perform, any response action which the Department deems necessary to protect public health, safety or welfare or the environment.

(p) Nothing in this Section shall be construed to imply authorization by the Department to any person other than the Department, or the Department's employees, agents or contractors, to enter any property not owned by him or her to carry out a response action, or otherwise injure or interfere with any other person's rights or interests in real or personal property, without that person's consent. After making reasonable efforts to obtain reasonable access to any site or other location to be investigated as a possible site not owned by the remediating party, an REC or remediating party who is unable to obtain such access may request, in writing, that the Department authorize him or her, or his or her employees, agents, representatives or contractors, to enter such site or location for the purpose of performing one or more necessary response actions. Each such request for authorization shall include all of the following information:

- (1) the identity of the person making the request and his or her relationship to the site or location;
- (2) the nature and location of the action(s) that he or she intends to undertake, the anticipated duration of the action(s) and the reasons(s) such access is (are) necessary to perform the action(s);
- (3) the identity of each person who owns or operates the site or location to which access is sought;
- (4) the results of any and all attempts to obtain such access; and
- (5) certification that a copy of the request has been sent to each person who owns or operates such sites or locations.

Authority G.S. 130A-310.12(b); 130A-310.1(c); 130A-310.1(e); 130A-310.3(c); 130A-310.5(a); 130A-310.6; 132.

#### .0303 APPROVAL OF REGISTERED ENVIRONMENTAL CONSULTANTS

(a) To qualify for Department approval as an REC, an applicant must complete and submit a sworn Request for Approval form, available from the Department, demonstrating that the applicant meets the requirements contained in this Section. The Request for Approval form must set forth the qualifications of all persons the applicant wishes to qualify as RSMs.

(b) Applicants must supply the names and telephone numbers of previous government and industry clients and copies of actual work products to verify experience, if requested by the Department. The Department may require applicants to supply additional information to clarify that provided on the Request for Approval form. Those appli-

cants not complying with such requests will not be approved to perform work pursuant to these Rules.

(c) An REC must promptly notify the Department if the nature of its business changes, if it no longer meets the requirements for approval under this Section due to change in personnel, or for any other reason, or if it discovers that any information it submitted in any Request for Approval is or was incorrect.

(d) Should a Department-approved RSM leave the employment of an REC or change employment within an REC, an REC must, no later than 30 days prior to the change, submit the name and qualifications of another person to perform the role of the RSM. If an REC does not receive 30 days notice by an RSM of the RSM's intended change in employment, the REC must notify the Department within 24- hours of the RSM providing such notice and within 30 days of the RSM's notice to the REC, submit to the Department the name and qualifications of another person to perform the role of the RSM. The Department shall determine whether the proposed replacement qualifies as an RSM. An REC may propose amendments to its approval as an REC to add or delete RSMs.

(e) The Department will notify applicants in writing whether they are approved to conduct business as an REC. No applicant may represent itself, or work, as an REC without written Department approval.

(f) An REC's approval will be valid for five years unless revoked earlier by the Department.

(g) The Department shall make available to the general public a list of all approved RECs.

Authority G.S. 130A-310.12(b).

#### **.0304 MINIMUM QUALIFICATIONS FOR REGISTERED ENVIRONMENTAL CONSULTANTS**

In order to be approved to perform work as an REC, an environmental consulting or engineering firm must meet the following requirements.

(1) REC applicants must demonstrate that one or more persons in their employ individually meet all of the following standards and requirements and therefore qualify to perform the role of RSM for the REC. To qualify as an RSM, an individual must:

(a) Have the following minimum relevant professional experience:

- (i) five years experience in investigation and remediation of hazardous substance or waste disposal sites;
- (ii) three years direct experience in supervising site investigation and remedial action projects; and
- (iii) eight years of total relevant professional experience, which must be work of a professional grade and character performed for a minimum

average of 20 hours per week that indicates the applicant is competent to render waste site cleanup activity opinions. Total relevant professional experience performed for less than a minimum average of 20 hours per week will be applied toward the satisfaction of these requirements on a pro rata basis. If an individual works more than 40 hours in a week, even if having multiple jobs, that individual can get credit only for one week's worth of work. The Department will consider the following criteria in evaluating whether an applicant RSM's waste site cleanup decision-making experience and practical experience constitute sufficient relevant experience: the nature of work activities; the field of work activities; the types of reports, studies and documents prepared; the range of methods evaluated and selected; the number of individuals and disciplines of other professionals supervised or coordinated; the extent of review of conclusions, recommendations and opinions by supervisors; the duration of employment; and any other factors the Department deems pertinent.

(b) Have sufficient training to meet the hazardous waste operations and emergency response training standard, 29 CFR 1910.120.

(c) Have a four-year or graduate degree from a college or university accredited by a regional accrediting agency in one of the following fields (degrees in related scientific fields will be considered on a case by case basis):

- (i) Biochemistry;
- (ii) Biology;
- (iii) Chemical Engineering;
- (iv) Chemistry;
- (v) Civil Engineering;
- (vi) Earth Science;
- (vii) Environmental Engineering;
- (viii) Environmental Science;
- (ix) Epidemiology;
- (x) Geochemistry;
- (xi) Geological Engineering;
- (xii) Geology;
- (xiii) Geophysics;
- (xiv) Geotechnical Engineering;
- (xv) Hydrogeology;
- (xvi) Hydrology;



- (xvii) Industrial Hygiene;
- (xviii) Mechanical Engineering;
- (xix) Physics;
- (xx) Soil Science; and
- (xxi) Toxicology.
- (d) Have a record of professionalism and integrity, demonstrated by the absence of:
  - (i) conviction of a felony;
  - (ii) conviction of a misdemeanor involving fraud, deceit, misrepresentation or forgery;
  - (iii) an adverse civil judgment in an action involving fraud, deceit, misrepresentation, or forgery;
  - (iv) disbarment or disciplinary action relating to any professional license; and
  - (v) disqualification from government contracts for negligent acts or failure to perform required work.
- (2) The applicant must demonstrate that it has an established environmental consulting practice.

Authority G.S. 130A-310.12(b).

#### **.0305 STANDARDS OF CONDUCT FOR REGISTERED ENVIRONMENTAL CONSULTANTS**

- (a) The REC and its RSMs must comply with the following standards of professional competence. RECs failing to do so will be disqualified from performing work as an REC pursuant to this Section and will be subject to any other applicable form of enforcement.
  - (1) An RSM shall render a waste site cleanup activity opinion only when he or she has directly reviewed the work to ascertain whether the completed work complies with with Section.
  - (2) The RSM shall perform his or her services only in areas of his or her competence and shall not render a decision on any assessment or cleanup plan or document dealing with subject matter for which he or she lacks competence by virtue of education or experience. If a site assessment or cleanup activity opinion requires expertise outside the RSM's field of expertise, the RSM shall render such an opinion relying in part upon the advice of one or more professionals having relevant competence.
- (b) The REC and its RSMs must comply with the following standards of professional responsibility. RECs failing to do so will be disqualified from performing work as an REC pursuant to this Section and will be subject to any other applicable form of enforcement.
  - (1) An REC shall at all times recognize its primary obligation is to protect public health, safety and welfare and the environment in the performance of professional services as an REC.
  - (2) If an REC acting pursuant to this Section identifies an imminent hazard at a site at which it is providing professional services pursuant to these Rules it shall, unless the REC is certain the remediating party has provided such notice, within 24 hours of discovery, notify the Department:
    - (A) of the hazard;
    - (B) whether the remediating party has agreed to take corrective action; and
    - (C) what action, if any, has been taken.
  - (3) If an REC acting pursuant to this Section determines hazardous substances have migrated to property adjoining property containing a source area, or determines there are sensitive environments or mixed wastes (comingled radioactive and chemical wastes) on the site, it shall, unless the REC is certain the remediating party has provided such notice, within 24 hours of discovery, notify the Department.
  - (4) In providing professional services all RSMs shall:
    - (A) exercise independent professional judgment;
    - (B) follow the requirements and procedures set forth in applicable provisions of this Section; and
    - (C) act with reasonable care and diligence, and apply the knowledge and skill ordinarily required of RSMs in good standing in the State at the time the services are performed.
  - (5) If, subsequent to the date an REC renders a waste site cleanup activity opinion, anyone employed by the REC that rendered the opinion learns that previously unconsidered facts, data or other information may support or lead to a different opinion, the REC shall promptly notify, in writing, the remediating party and the Department.
  - (6) If, subsequent to the date of its engagement, a successor REC learns of material facts, data or other information that existed as of the date of any predecessor REC's waste site cleanup activity opinion but was not disclosed in that opinion, the successor REC shall promptly notify, in writing, the remediating party and the Department.
  - (7) An REC shall not allow the use of its name or the names of its RSMs by, or associate in a business venture with, any person or firm which an REC knows or should know is engaging in fraudulent or dishonest business or professional practices relating to the professional responsibilities of the REC.
  - (8) The REC shall be objective and truthful in all professional reports, public statements or testimony, and shall include all relevant and pertinent information in the reports, statements, or testimony when the result of an omission would or reasonably could lead to a fallacious conclusion.

- (9) An REC shall not falsify or permit misrepresentation of an RSM's academic or professional qualifications, and shall not misrepresent or exaggerate an RSM's degree of responsibility in, or for, the subject matter of prior assignments.
- (10) RECs must comply in good faith with any directive, regulation, policy or guidance of the Department.
- (11) All RECs are charged with having knowledge of this Section.

Authority: *G.S. 130A-310.12(b).*

**.0306 TECHNICAL STANDARDS FOR REGISTERED ENVIRONMENTAL CONSULTANTS**

(a) The REC is charged with ensuring that all documents and plans comply with the remediating party's agreement with the Department and the Inactive Hazardous Sites Response Act and associated rules and guidance.

(b) All work phase completion statements, schedules, work plans, and reports require REC certification. An REC's certification must comply with the following:

- (1) REC certification of any document requires inclusion of the following statement, signed by the RSM and notarized:

"I certify under penalty of law that I am personally familiar with the information contained in this submittal, including any and all supporting documents accompanying this certification, and that the material and information contained herein is, to the best of my knowledge and belief, true, accurate, complete and complies with the Inactive Hazardous Sites Response Act G.S. 130A-310, et seq. and the voluntary remedial action program Rules 15A NCAC 13C .0300 and associated guidance. I am aware that there are significant penalties for willfully submitting false, inaccurate or incomplete information."

- (2) The RSM shall certify only documents that contain the following notarized declaration signed and dated by, and including the title of, the highest ranking official of the remediating party having day-to-day responsibility for the performance of the response action which is the subject of the submittal:

"I certify under penalty of law that

I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this certification, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the material and information contained herein is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for willfully submitting false, inaccurate or incomplete information."

- (3) Any work which would constitute the "practice of engineering" as defined by G.S. 89C must be performed under the responsible charge of, and signed and sealed by, a professional engineer registered in the state of North Carolina. Any work which would constitute the "public practice of geology" as defined by G.S. 89E must be performed under the responsible charge of, and signed and sealed by, a geologist licensed in the state of North Carolina.
- (4) RSM certification of the following documents must occur prior to implementation:
  - (A) remedial investigation work plans prepared in accordance with Paragraph (g) of this Rule;
  - (B) remedial action plans prepared in accordance with Paragraph (l) of this Rule;
  - (C) remedial action preconstruction reports prepared in accordance with Paragraph (m) of this Rule; and
  - (D) any modifications of work schedules.
- (5) The RSM must prepare certified completion statements for the following work phases and provide them to the Department at the times specified in Rule .0302(l) of this Section:
  - (A) completion of phase I of the remedial investigation;
  - (B) REC approval of cleanup levels;
  - (C) completion of the remedial investigation;
  - (D) REC approval of the proposed remedial action plan;
  - (E) completion of the remedial design and construction; and
  - (F) completion of all remedial action activities.
- (6) RSM certification pursuant to the preceding paragraph must include the following statement signed by the RSM and notarized:

"The [insert work phase] which is the subject of this certification has, to the best of my knowledge, been completed in compliance with the Inactive Hazardous Sites Response



Act G.S. 130A-310, et seq. and the voluntary remedial action program Rules 15A NCAC .0300 of this Section, and associated guidance, and [insert name of the REC] is in compliance with Rules .0305(b)(2) and .0305(b)(3) of this Section. I am aware that there are significant penalties for willfully submitting false, inaccurate or incomplete information."

Certification of the completion of all remedial action activities must also include the following statement:

"The approved and certified site remedial action plan has been implemented, and to the best of my knowledge and belief, cleanup levels determined pursuant to Rule .0308 of this Section have been achieved, and no significant or otherwise unacceptable risk or harm to human health or the environment remains at the site."

(c) The REC may approve and certify site activities and documents pursuant to these Rules only when the following environmental sample collection and analyses criteria are met:

- (1) The REC must employ analytical and environmental monitoring data, to support recommendations or conclusions with respect to assessment, removal, treatment, or containment actions, which are scientifically valid and of a level of precision and accuracy commensurate with their stated or intended use.
- (2) Procedures and methodologies employed for the collection and analysis of soil, sediment, water, vapor, air, and waste samples shall be:
  - (A) methods published by the United States Environmental Protection Agency (USEPA), the American Society for Testing and Materials (ASTM), the American Public Health Association (APHA), the National Institute for Occupational Safety and Health (NIOSH), the American Water Works Association (AWWA), or other organizations with expertise in the development of standardized analytical testing methods; or
  - (B) modifications of published methods, provided that all modifications are completely documented.
- (3) The REC may only use laboratories certified to analyze applicable certifiable parameters under 15A NCAC 2H .0800, or a contract laboratory under the United States Environmental Protection

Agency Contract Laboratory Program to analyze samples collected pursuant to rules under this Section.

- (4) Laboratory and other reports of analyses of aqueous samples shall be reported as mass per unit volume; such reports of analyses of solid samples shall be reported as mass per unit mass.
- (5) The REC shall only allow sample collection and analyses to be performed by persons who are qualified by education, training, and experience.
- (6) All documents prepared pursuant to these regulations that contain the results of sample collection and analyses shall include the following information:
  - (A) the date, location, and time of sampling, and the name of the individual who collected the sample;
  - (B) specification of all sample filtration or preservation procedures used;
  - (C) the date of receipt of the sample at the laboratory, and the date(s) the sample was extracted and analyzed;
  - (D) the name and address of the laboratory, and proof of certification under 15A NCAC 2H .0800 or the USEPA Contract Laboratory Program;
  - (E) the sample matrix description and identification number(s);
  - (F) the sample preparation and analytical method name(s) and number(s);
  - (G) the results of the analysis, in clearly expressed concentration units;
  - (H) the sample quantitation limit of each reported analyte based upon analytical conditions;
  - (I) details of any known conditions or findings which may affect the validity of analytical data, including but not limited to equipment blank, trip blank, and method blank, surrogate, spiked sample, or other quality control data;
  - (J) the laboratory's written justification for any sample dilution, additional sample preparation, or deviation from specified analytical methods; and
  - (K) complete chain of custody documentation for each sample.

(d) The REC may approve and certify site activities and documents pursuant to this Section only when procedures to protect health, safety, public welfare and the environment during the performance of response actions are being implemented. The scope and detail of health and safety procedures shall be commensurate with the degree and nature of the risks posed to human and ecological populations by the disposal site and response actions. Standardized health and safety plans may be appropriate for routine activities conducted during response actions. Such proce-

dures shall include, without limitation, at least the following:

- (1) Measures to protect human populations from exposure to hazardous substances.
- (2) Air monitoring activities, if necessary to protect the public from exposure to gases and air-borne particulates.
- (3) Measures necessary to contain hazardous substances, including:
  - (A) measures to control stormwater runoff;
  - (B) measures to control dust and other environmental media (e.g., wetting soils);
  - (C) measures to decontaminate vehicles and equipment to minimize the spread of contaminated soil from the disposal site;
  - (D) measures to secure on-site excavations and stockpiles of contaminated materials; and
  - (E) discontinuance of response actions where necessary to protect public health and safety.

(e) The REC must plan and implement the remedial investigation so that to the extent practicable the location and identity of all hazardous substances discharged to the environment at a site have been established. All areas known, suspected, or having a reasonable probability of being contaminated by hazardous substances must be investigated.

(f) The REC must plan and implement the remedial investigation so that the areal and vertical extent of hazardous substance contamination is delineated for each area of concern.

(g) The REC may certify only remedial investigation plans which are prepared in compliance with Paragraphs (c), (d), (e), and (f) of this Rule and any other applicable requirements and which contain at least the following:

- (1) site location information including street address, longitude and latitude, and site and surrounding property land use;
- (2) a summary of all management practices employed at the site for hazardous wastes and any wastes that may have contained hazardous substances including: a list of types and amounts of waste generated (with RCRA waste codes), treatment and storage methods, and ultimate disposition of wastes; a description of the facility's past and current RCRA status; the location and condition of all identified vessels currently or previously used to store any chemical products, hazardous substances or wastes; and a summary of the nature of all identified on-site hazardous substance releases, including disposal or spills;
- (3) United States Geological Survey topographic maps sufficient to display topography within a one-mile radius of the site;
- (4) a site survey plat prepared and certified by a land surveyor registered in the state of North Carolina including: scale; benchmarks; north arrow; loca-

tions of property boundaries, buildings, structures, all perennial and non-perennial surface water features, drainage ditches, dense vegetation, known and suspected spill or disposal areas, underground utilities, storage vessels, existing on-site wells; and identification of all adjacent property owners and land usage;

- (5) a description of local geologic and hydrogeologic conditions;
- (6) inventory and map of all identifiable wells, springs, and surface-water intakes used as sources of potable water within a one-half mile radius of each source area, or, if the source area is unknown, within a one-half mile radius of each point where contamination has been identified at the site;
- (7) an evaluation of the site and all adjacent property for the existence of any environmentally sensitive areas;
- (8) a copy of the current owner's(s') deed(s) to the property;
- (9) a chronological listing of all previous owners and each period of ownership since the property was originally developed from pristine land;
- (10) operational history with aerial photographs and Sanborne Fire Insurance maps to support land-use history;
- (11) a list of all hazardous substances which have been used or stored at the site, and approximate amounts and dates of use or storage as revealed by available written documentation and interviews with a representative number of former and current employees or occupants possessing relevant information;
- (12) site environmental permit history, including copies of all federal, state, and local environmental permits, past and present, issued to the remediating party or within its custody or control;
- (13) a summary of all previous and ongoing environmental investigations and environmental regulatory involvement with the site, and copies of all associated reports and laboratory data in public records, or within the custody or control of the REC or remediating party;
- (14) intended procedures for characterizing site geologic and hydrogeologic conditions and identifying and delineating each contamination source as to each affected environmental medium, including any plan for special assessment such as a geophysical survey;
- (15) intended methods, locations, depths of, and justification for, all sample collection points for all media sampled, including monitoring well locations and anticipated screened intervals;
- (16) proposed field and laboratory procedures for quality assurance/quality control;
- (17) proposed analytical parameters and analytical

- methods for all samples;
- (18) equipment and personnel decontamination procedures; and
- (19) a health and safety plan that conforms to the federal Occupational Safety and Health Act, 29 U.S.C. § 651, et seq. and Title 29 of the Code of Federal Regulations, and assures that the health and safety of nearby residential and business communities will not be adversely affected by activities related to the remedial investigation.
- (h) The REC may certify only remedial investigation reports which are prepared in compliance with Paragraph (c) of this Rule and any other applicable requirements and which contain at least the following:

- (1) a narrative description of how the investigation was conducted, including a discussion of any variances from the approved work plan;
- (2) a description of groundwater monitoring well design and installation procedures, including drilling methods used, completed drilling logs, "as built" drawings of all monitoring wells, well construction techniques and materials, geologic logs, and copies of all well installation permits;
- (3) a map, drawn to scale, showing all soil sample and monitoring well locations in relation to known disposal areas or other sources of contamination. Monitoring wells must be surveyed to a known benchmark. Soil sample locations must be surveyed to a known benchmark or flagged with a secure marker until after the remedial action is completed. Monitoring well locations and elevations must be surveyed by a registered land surveyor;
- (4) a description of all field and laboratory quality control and quality assurance procedures followed during the remedial investigation;
- (5) a description of procedures used to manage drill cuttings, purge water and decontamination water;
- (6) a summary of site geologic conditions, including a description of soils and vadose zone characteristics;
- (7) a description of site hydrogeologic conditions (if groundwater assessment is determined to be necessary), including current uses of groundwater, notable aquifer characteristics, a water table elevation contour map with groundwater flow patterns depicted, and tabulated groundwater elevation data;
- (8) tabulation of analytical results for all sampling (including sampling dates and soil sampling depths) and copies of all laboratory reports including quality assurance/quality control documentation;
- (9) soil, groundwater, surface water and sediment contaminant delineation maps and cross sections, including scale and sampling points with contaminant concentrations;

- (10) a description of procedures and the results of any special assessments such as geophysical surveys, immunoassay testing, soil gas surveys, or test pit excavations; and
  - (11) color copies of site photographs.
- (i) Any proposed remedy which would:
- (1) be conducted entirely on site and for which a permit waiver is desired under G.S. 130A-310.3(e);
  - (2) involve on-site containment or capping; or
  - (3) exceed the three million dollars (\$3,000,000) cost maximum contained in G.S. 130A-310.9(a) without a waiver,

must receive Department concurrence prior to implementation. The REC must submit to the Department a brief summary of available remedies, their projected costs, and in each case reasons why a remedy was accepted or rejected.

(j) Thirty days prior to approving any remedial action plan, the REC must provide notice of the remedial action plan to those who have requested notice that such plans have been developed, as provided in G.S. 130A-310.4(c)(2). The REC must provide proof of such notice and any resulting comments from the public to the Department prior to approval of the remedial action plan.

(k) Remedial actions that involve the emission or discharge of hazardous substances to the atmosphere shall be conducted in a manner that provides for the protection of human health and the environment, in conformance with this Section and any applicable permits, approvals, laws or other rules or regulations.

(l) The REC may certify only remedial action plans which are prepared in compliance with Paragraphs (c), (d), (i), (j), and (k), of this Rule and any other applicable requirements and which contain at least the following:

- (1) A discussion of the results of the remedial investigation including media contaminated, contaminants of concern, and the areal and vertical extent of contamination.
- (2) A brief statement of objectives for the remedial action.
- (3) An evaluation of available remedial alternatives using the following feasibility study criteria:
  - (A) protection of human health and the environment, including attainment of cleanup levels;
  - (B) compliance with applicable federal, state and local regulations;
  - (C) long-term effectiveness and permanence;
  - (D) reduction of toxicity, mobility and volume;
  - (E) short-term effectiveness, i.e., effectiveness at minimizing the impact of the site remedial action on the environment and the local community;
  - (F) implementability, i.e., technical and logistical feasibility, including an estimate of time required for completion;
  - (G) cost; and

- (H) community acceptance.
- (4) A detailed description and conceptual design of the proposed remedy, including process flow diagrams and pre-design drawings of all major components of the treatment train.
- (5) A demonstration that the proposed remedy is supported by the remedial alternative feasibility study conducted pursuant to Paragraph (l)(3) of this Rule.
- (6) A description of all activities necessary to implement the proposed method(s) of remedial action in compliance with applicable laws and regulations and in a manner such that cleanup standards are met. These activities include, but are not limited to, well installation and abandonment, sampling, run-on/run-off control, discharge of treated waste streams, and management of investigation and remedial action derived wastes.
- (7) A description of any proposed treatability studies and additional site characterization needed to support the final design.
- (8) A description of procedures and a schedule for additional site characterization, treatability studies, final design, construction, operation and maintenance, system monitoring and performance evaluation, and progress reporting.
- (9) A description of the criteria for remedial action completion, including procedures for post-remedial and confirmatory sampling.
- (10) A health and safety plan that conforms to the federal Occupational Safety and Health Act, 29 U.S.C. § 651, et seq. and Title 29 of the Code of Federal Regulations, and assures that the health and safety of nearby residential and business communities will not be adversely affected by activities related to the remedial action.
- (11) Equipment and personnel decontamination procedures.
- (m) Prior to beginning construction, the REC must certify remedial action preconstruction reports which contain at least the following:
  - (1) the results of all treatability studies and additional site characterization work completed since the remedial investigation;
  - (2) final engineering design report, including a narrative description of process design, final plans and specifications, and an updated project schedule; and
  - (3) copies of final registrations, permits and approvals.
- (n) The REC may certify only remedial action construction completion reports which contain at least:
  - (1) "as built" plans and specifications;
  - (2) a summary of major variances from the final design plans; and
  - (3) a summary of any problems encountered during construction.

(o) The REC must prepare and certify quarterly remedial action progress reports for remedial actions of greater than three months duration. Groundwater remedial action progress reports may be prepared on an annual basis after the first full year of remedial action and the completion of four quarterly monitoring events. The REC may certify only remedial action progress reports which are prepared in compliance with Paragraph (c) of this Rule and any other applicable requirements and which contain at least the following:

- (1) operation and maintenance results, i.e., summaries of remedial action operating and maintenance requirements and a discussion of major problems encountered;
- (2) performance evaluation results, i.e., tabulated and graphical presentations of monitoring data and a comparison of remedial action performance to design goals;
- (3) a description of all field and laboratory quality control and quality assurance procedures followed during any sampling and analysis;
- (4) tabulation of analytical results for all sampling and copies of all laboratory reports including quality assurance/quality control documentation; and
- (5) a map, drawn to scale, showing all soil sample and monitoring well locations.
- (p) The REC may certify only final remedial action completion reports which contain at least the following:
  - (1) a final progress report which includes all the information required under Paragraph (o) of this Rule;
  - (2) a summary of remedial action operating experience and effectiveness in meeting design goals, based on all performance monitoring data and progress reporting to date;
  - (3) a discussion of criteria for remedial action completion, and a demonstration, supported by confirmatory sampling data, that such criteria have been satisfied; and
  - (4) a summary of total project costs.
- (q) In the performance of its role pursuant to these Rules, the REC must manage investigation or remedial action derived wastes in a manner that provides for the protection of human health and the environment and that complies with all applicable federal, state, and local laws, rules, regulations and guidance.

*Authority G.S. 130A-310.12(b).*

#### **.0307 DEPARTMENTAL AUDITS AND INSPECTIONS**

- (a) The Department may conduct random or targeted audits of any REC, remediating party, response action or site which is subject to this Section.
- (b) During Departmental audits of voluntary remedial actions, the Department may:

- (1) request that the person who has performed the response action provide a written explanation, or other supporting evidence, to demonstrate compliance with this Section and other applicable requirements;
- (2) request that the person who has performed the response action or who is the subject of the audit appear at one of the Department's offices for an interview to provide an oral explanation, or other evidence, to demonstrate compliance with this Section and other applicable requirements (any person requested to appear for an interview may be accompanied by an attorney or other representative);
- (3) visit a site or other location to determine whether an REC, remediating party, response action or site is in compliance with this Section and other applicable requirements;
- (4) investigate, take samples at a site and inspect records, conditions, equipment or practices material to the response action, or property related to the site; or
- (5) take any other action the Department deems necessary to determine whether response actions have been performed in compliance with this Section and other applicable requirements.

(c) Remediating parties must provide financial assurance, by paying an annual administration cost, to participate in the voluntary remedial action program under this Section. This payment shall be set by the Department based on the expected cost of auditing voluntary remedial actions and shall be used to offset that cost. Remediating parties providing such monies shall pay any shortfall, or be reimbursed any remainder not expended by the Department, annually.

(d) Based on audit findings, the Department may terminate a site's eligibility for the voluntary remedial action program, disqualify an RSM or REC from work on a site or from the program, and take any other applicable enforcement action.

*Authority G.S. 130A-310.12(b); 130A-310.9(b).*

### **.0308 CLEANUP LEVELS**

(a) Characterization of risks to health, safety, public welfare, and the environment is not required under this Section for a disposal site, environmental medium, or chemical for which response actions have successfully reduced concentrations of hazardous substances to on-site natural background levels established in accordance with current published Department guidance pertaining to Inactive Hazardous Substance or Waste Disposal Sites.

(b) Any characterization under this Section of risks to health, safety, public welfare and the environment, and determinations of cleanup levels for all environmental media, shall be made using current published Department guidance pertaining to Inactive Hazardous Substance or

### Waste Disposal Sites.

(c) RECs' determinations of cleanup levels shall be submitted to the Department, accompanied by the following sworn and notarized certification, in accordance with the schedule for such submittals provided in Rule .0302(l) of this Section:

"I, [insert name of RSM] on behalf of [insert name of REC] certify that the accompanying cleanup levels have been determined using the current DEHNR guidance pertaining to Inactive Hazardous Substance or Waste Disposal Sites."

*Authority G.S. 130A-310.3(d); 130A-310.12(b).*

*The Codifier of Rules has entered the following temporary rule(s) in the North Carolina Administrative Code. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.*

**TITLE 15A - DEPARTMENT OF ENVIRONMENT,  
HEALTH, AND NATURAL RESOURCES**

**Rule-making Agency:** *Department of Environment, Health,  
and Natural Resources*

**Rule Citation:** *15A NCAC 1M .0101 - .0102, .0201 -  
.0202, .0301 - .0306*

**Effective Date:** *June 19, 1996*

**Findings Reviewed:** *Approved by Julian Mann, III*

**Authority for the rule-making:** *G.S. 143-215.74C-E*

**Reason for Proposed Action:** *The purpose of this rulemaking is to establish the certification procedures and requirements for operators of animal waste management systems as required by NCGS 143-215.74C - E. The intent of this certification is to reduce nonpoint source pollution that may result from the land application of animal waste that is generated by the raising of swine (Sus scrofa). The certification program is designed to protect the public health and to encourage the development and improvement of the state's agricultural land for the protection of food and other agricultural products.*

**Comment Procedures:** *Comments, statements, data and other information may be submitted in writing within 30 days after the date of publication of this issue of the North Carolina Register. Copies of the proposed rules and information package may be obtained by contacting the Technical Assistance and Certification Group at (919) 733-0026. Written comments may be submitted to Ron Ferrell, Division of Environmental Management, Water Quality Section, Technical Assistance and Certification Group, P.O. Box 29535, Raleigh, NC 27626-0535.*

**CHAPTER 1 - DEPARTMENTAL RULES**

**SUBCHAPTER 1M - CERTIFICATION OF  
OPERATORS OR ANIMAL WASTE  
MANAGEMENT SYSTEMS**

**SECTION .0100 - GENERAL  
PURPOSE/DEFINITIONS**

**.0101 PURPOSE**

(a) These Rules set forth the requirements and procedures for a person who performs the land application of animal waste from swine production to be certified as

required by G.S. 143-215.74C-E. The purpose of this statute is to reduce nonpoint source pollution in order to protect the public health and to conserve and protect the quality of the State's water resources, and to encourage the development and improvement of the State's agricultural land for the production of food and other agricultural products.

(b) These Rules apply to all animal waste management systems designed to manage and that actually serve more than 250 swine. Such facilities are required to maintain a certified Operator in Charge for the land application of animal waste, as defined in Rule .0102 of this Section. Animal waste shall be managed so that the application of the waste does not cause a discharge of pollutants to the surface waters of the State, except as a result of a storm event more severe than a 25-year, 24-hour storm. Only the certified Operator in Charge, or a person under the supervision of the Operator in Charge, may apply animal waste to the land. The owner of the facility is responsible for ensuring that the waste application is performed by an Operator in Charge or a person under the supervision of an Operator in Charge.

**History Note:** *Authority G.S. 143-215.74C-E;  
Temporary Adoption Eff. June 19, 1996.*

**.0102 DEFINITIONS**

(a) "Animal waste" means liquid residuals, resulting from the raising of swine (Sus scrofa), that are collected, treated, stored, or applied to the land through an animal waste management system.

(b) "Animal waste management system" means a combination of structural and nonstructural practices that will properly collect, treat, store, or apply animal waste to the land such that no discharge of pollutants occurs to surface waters of the State by any means except as a result of a storm event more severe than the 25-year, 24-hour storm.

(c) "Application" means laying, spreading on, irrigating, or injecting animal waste onto or into land.

(d) "Appropriate examination" means an examination that has been developed and approved by the Secretary or his designee.

(e) "Approved training program" means a training program that has been developed and approved by the Secretary or his designee in cooperation with the Cooperative Extension Service.

(f) "Currently valid certification" means that all training and certification requirements have been completed and annual renewal fees have been paid as specified in G.S. 143-215.74E (a)-(b).

(g) "Operator in Charge" means a person who holds a currently valid certificate to operate an animal waste management system and who has primary responsibility for

the operation of the system.

(h) "Owner" means the person who owns or controls the land used for agricultural purposes or the person's lessee or designee.

(i) "Person under the supervision of an Operator in Charge" means a person who takes directions from the Operator in Charge and who may only land apply animal waste when the Operator in Charge is on the property and is available for consultation and advice at any time during the application of animal waste.

History Note: Authority G.S. 143-215.74C-E;  
Temporary Adoption Eff. June 19, 1996.

## SECTION .0200 - DUTIES AND REQUIREMENTS

### .0201 DUTIES AND REQUIREMENTS OF OWNERS

(a) The owner of each individual animal waste management system must submit a letter to the Division of Environmental Management, Technical Assistance and Certification Group, Department of Environment, Health, and Natural Resources, P.O. Box 29535, Raleigh, North Carolina 27626-0535, which designates an Operator in Charge and is countersigned by the certified operator. This letter must be submitted by January 1, 1997 for all facilities in operation as of that date. Otherwise, the Operator in Charge must be designated:

- (1) before a new animal waste management system is placed in operation after January 1, 1997; or
- (2) within 30 days after a new Operator in Charge is designated.

(b) The Secretary or his designee may assess a civil penalty of up to one thousand dollars (\$1,000) for failure to designate and maintain an Operator in Charge for each animal waste management system that serves more than 250 swine.

History Note: Authority G.S. 143-215.74C-E;  
Temporary Adoption Eff. June 19, 1996.

### .0202 DUTIES AND REQUIREMENTS OF OPERATORS IN CHARGE

(a) An Operator in Charge of an animal waste management system:

- (1) shall possess a currently valid certification as an Animal Waste Management System Operator;
- (2) shall be responsible for and must visit and inspect each animal waste management system at least weekly;
- (3) shall be on site during the application of animal waste; and
- (4) shall properly manage and document operation and maintenance of the animal waste management system.

(b) Holders of certifications under this program shall notify the Division of Environmental Management, Techni-

cal Assistance and Certification Group, Department of Environment, Health, and Natural Resources, P.O. Box 29535, Raleigh, North Carolina 27626-0535, in writing, within 30 days of any change in address.

(c) The Secretary or their designee may assess a civil penalty of up to one thousand dollars (\$1,000) if it finds that the Operator in Charge has practiced fraud or deception, or that reasonable care, judgment, or the application of their knowledge or ability was not used in the performance of his duties.

History Note: Authority G.S. 143-215.74C-E;  
Temporary Adoption Eff. June 19, 1996.

## SECTION .0300 - CERTIFICATION OF OPERATORS

### .0301 QUALIFICATIONS

An applicant for certification as an Animal Waste Management System operator shall be required to:

- (1) have completed an approved training program on the operation of animal waste management systems that provides instruction regarding the collection, storage, treatment, and application of animal waste. The applicant shall be familiar with the components of animal waste collection and treatment systems, operation and maintenance of this equipment, laws and regulations governing the management of animal waste, waste management plans, and have the ability to perform calibrations and calculations relating to the application of the waste;
- (2) have demonstrated competence in the operation of animal waste management systems by passing an appropriate examination; and
- (3) have paid the required fees as stipulated by G.S. 143-215.74E.

History Note: Authority G.S. 143-215.74C-E;  
Temporary Adoption Eff. June 19, 1996.

### .0302 APPLICATION PROCEDURES

(a) An application for requesting examination for certification as an animal waste management system operator must be properly and accurately completed and submitted to the Department of Environment, Health, and Natural Resources, or its designee. Applications can be obtained from, and shall be returned to: Division of Environmental Management, Technical Assistance and Certification Group, Department of Environment, Health, and Natural Resources, P.O. Box 29535, Raleigh, North Carolina 27626-0535.

(b) Incomplete applications cannot be processed and will be returned to the applicant.

(c) An application being filed for examination shall be postmarked by the United States Postal Service at least 30 days prior to the date upon which the examination is scheduled to be administered, or be submitted according to



a process approved by the Secretary or his designee.

(d) Upon receipt of the application by the Secretary or his designee, the application shall be reviewed by the designee(s) of the Secretary for eligibility to take the examination. The applicant shall be notified of their eligibility and shall be advised of the date, time and place of the examination. In cases where the applicant is ineligible for examination, the applicant shall also be notified by letter and advised of the reason for ineligibility. Any applicant who intentionally supplies false information on the application for certification for the purpose of gaining eligibility, shall be ineligible for the examination.

(e) An applicant shall be eligible to take the examination upon completion of an approved training school designed for operators of animal waste management systems. Completion of an approved school shall be verified by a signed affidavit from the school instructor.

(f) An applicant who has failed to pass the appropriate examination after three attempts must then again satisfactorily complete an approved training program before being eligible to retake the examination.

*History Note: Authority G.S. 143-215.74C-E;  
Temporary Adoption Eff. June 19, 1996.*

### .0303 EXAMINATION PROCEDURES

The Secretary or his designee shall conduct examinations for certification:

- (1) The dates, times, and places of examination shall be determined by the Secretary.
- (2) Each applicant filing for examination shall be notified of the date, time, and place of the examination.
- (3) Examinations approved by the Secretary shall be given only to those who, after filing proper application, have been determined to be eligible.
- (4) When each applicant receives their examination paper, they will identify themselves by way of a valid driver's license or other form of photo identification satisfactory to the proctor of the examination.
- (5) Representatives of the Secretary or his designees, who are supervising the examinations may take appropriate action against applicants, including dismissal from the examination, if the examination policies and procedures as outlined by the Secretary or his designee are not followed.
- (6) An examination score of 70% or higher shall constitute a passing score.
- (7) The applicant will be informed, in writing only, by the Secretary or his designee as to the results of the examination. If a passing score is made, the applicant will be certified as an Animal Waste Management System Operator and shall be issued a certificate by the Secretary. After each examination, a list of those certified shall be prepared and made part of the permanent records of the

Secretary.

- (8) Under normal circumstances, neither the examination grade nor the examination paper of any applicant will be made available to anyone other than the Secretary or his designee and those approved persons who assist in conducting and grading the examinations.

*History Note: Authority G.S. 143-215.74C-E;  
Temporary Adoption Eff. June 19, 1996.*

### .0304 RENEWAL OF CERTIFICATION

A currently valid certification as an Animal Waste Management System Operator may be maintained by:

- (1) the payment of an annual renewal fee established by the Secretary; and
- (2) once every five years:
  - (a) attend the six hour training program; and
  - (b) demonstrate competence in the operation of animal waste management systems by passing an appropriate examination.

*History Note: Authority G.S. 143-215.74C-E;  
Filed as a Temporary Adoption Eff. June 19, 1996.*

### .0305 REVOCATION, RELINQUISHMENT OR INVALIDATION OF CERTIFICATION

(a) The Secretary may revoke or suspend the certificate of an operator or may issue a written reprimand to an operator if it finds that the operator has practiced fraud or deception; or that reasonable care, judgment, or the application of their knowledge or ability was not used in the performance of their duties; or that the operator in charge is incompetent or unable to properly perform their duties, in accordance with the procedure set forth in G.S. 150B, Article 3. Prior to the Secretary or his designee taking action on a proposed revocation, suspension or reprimand, the operator shall be given an opportunity to submit a written statement and present oral argument before the Secretary or his designee at a scheduled meeting. Notice of the meeting shall be hand delivered or by certified mail at least 15 days prior to the meeting.

(b) Notice of the revocation or suspension shall be hand delivered to the operator or by certified mail at least 20 days prior to the effective date of the revocation or suspension. The notice shall contain the alleged facts or conduct upon which the revocation or suspension is based and shall inform the operator of the opportunity to contest the action.

(c) Certification may be relinquished by submission to the Secretary or his designee of the original certificate and a notarized statement of relinquishment.

(d) Failure to submit the annual renewal fee by the due date shall result in invalidation of the certification. Certification may be reinstated upon payment of all renewal fees and meeting all other qualifications outlined in Rule .0304 of this Section.



History Note: Authority G.S. 143-215.74C-E;  
Temporary Adoption Eff. June 19, 1996.

Box 629, Raleigh, NC 27602-0629. Comments will be  
accepted by Mr. Balentine through August 13, 1996.

**.0306 RECERTIFICATION FOLLOWING  
REVOCATION OR RELINQUISHMENT**

(a) After revocation or relinquishment has been effective for a period of not less than 270 days, a person may apply in writing for recertification by the Secretary or his designee. The petition must include any relevant facts concerning changes to conditions under which revocation or relinquishment occurred. Such facts must show clearly that the applicant will comply with the laws and regulations concerning the operation of animal waste management systems.

(b) Within 120 days following receipt of an application for recertification, the Secretary will notify the applicant by letter of its decision to deny or grant examination eligibility in accordance with procedures set out in Rule .0305 of this Section. Additional eligibility requirements including a show cause conference may be imposed by the Secretary or his designee as is deems appropriate. Eligibility will only be granted if there is substantial evidence that the conditions leading to the revocation or relinquishment have been corrected.

(c) Recertification of a person as an operator of animal waste management systems shall only occur by means of application and examination. The examination will not be waived. The applicant shall meet the eligibility requirements as outlined in Rule .0301 of this Section.

(d) Upon notification of the Secretary's or his designee's decision to deny eligibility, the applicant may appeal the decision pursuant to the procedures contained in G.S. 150B, Article 3.

History Note: Authority G.S. 143-215.74C-E;  
Temporary Adoption Eff. June 19, 1996.

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Rule-making Agency: DEHNR - Commission for Health  
Services

Rule Citation: 15A NCAC 21H .0111, .0113

Effective Date: June 19, 1996

Findings Reviewed and Approved by Beecher R. Gray

Authority for the rule-making: G.S. 130A-129

Reason for Proposed Action: This Rule is proposed for  
amendment in order to extend NC Sickie Cell Program  
coverage to children with Sickie Cell disease.

Comment Procedures: All persons interested in these  
matters are encouraged to submit written comments or  
questions to Grady Balentine, Department of Justice, PO

**CHAPTER 21 - HEALTH: PERSONAL HEALTH**

**SUBCHAPTER 21H - SICKLE CELL SYNDROME:  
GENETIC COUNSELING:  
CHILDREN AND YOUTH SECTION**

**SECTION .0100 - SICKLE CELL SYNDROME  
PROGRAM**

**.0111 MEDICAL SERVICES PROVIDED**

(a) The North Carolina sickle cell syndrome program shall provide services only when they are not available through other sources or agencies. Prior to requesting services, it shall be determined that the patient is not eligible for services through the division of services for the blind; Medicaid and Medicare programs; school health program; vocational rehabilitation; workmen's compensation or civilian health and medical programs of the uniformed services (CHAMPUS).

(b) If an individual meets the eligibility requirements, he shall be provided the following medical services:

~~(1) For individuals below the age of 21, all outpatient and all inpatient care shall be paid for by the Crippled Children's Program, including all hospital and physician fees. For individuals 21 years of age and older, all outpatient and all inpatient care shall be paid for by the sickle cell syndrome program.~~

- ~~(1)~~ (2) inpatient care; Outpatient services include:
- (2) (A) routine visits to the physician;
- (3) (B) prescription drugs such as antibiotics;
- (4) (C) general analgesics;
- (5) (D) appliances;
- (6) (E) preventive and limited maintenance dentistry; dentistry for adult patient only;
- (7) (F) obstetrical care (excluding delivery of baby); and
- (8) (G) eye care (when the division of services for the blind will not provide coverage).

History Note: Filed as a Temporary Amendment Eff.  
October 14, 1988, for a period of 180 days to expire on  
April 12, 1989;

Filed as a Temporary Amendment Eff. November 7, 1983,  
for a period of 120 days to expire on March 4, 1984;

Authority G.S. 130A-129;

Eff. February 1, 1976;

Amended Eff. April 22, 1977;

Readopted Eff. December 5, 1977;

Amended Eff. October 1, 1984; March 1, 1984; July 1,  
1982; January 1, 1982;

Expired Temporary Amendment Eff. April 12, 1989;

Amended Eff. September 1, 1990;

Temporary Amendment Eff. June 19, 1996.

**.0113 PROCEDURE FOR REQUESTING SERVICES**

(a) Any provider (physician, hospital, dentist) rendering services to a patient with one of the named disorders may request reimbursement services through the Sickle Cell Syndrome Program. ~~Children's Special Health Services when under 21 years of age and the sickle cell syndrome program when 21 years of age and older.~~ The request shall be made by completing the appropriate program authorization request form. The form shall include:

- (1) biographical data of patient;
- (2) diagnoses (primary and secondary);
- (3) provider information including service date(s);
- (4) request and describe service;
- (5) describe and justify treatment or service, list other providers and state drug information if applicable;
- (6) check number services provided for ambulatory visits and answer all questions pertaining to patient's treatment and financial support; and
- (7) signature of physician or dentist, address and date of request.

(b) A financial eligibility form shall be submitted in accordance with rules found in 15A NCAC 24A.

*History Note: Authority G.S. 143B-193;*

*Eff. February 1, 1976;*

*Readopted Eff. December 5, 1977;*

*Amended Eff. July 1, 1982; April 1, 1982;*

*Temporary Amendment Eff. June 19, 1996.*

**TITLE 21 - OCCUPATIONAL LICENSING BOARDS**

**CHAPTER 12 - LICENSING BOARD FOR  
GENERAL CONTRACTORS**

**Rule-making Agency:** *Licensing Board for General Contractors*

**Rule Citation:** *21 NCAC 12 .0204, .0503*

**Effective Date:** *May 31, 1996*

**Findings Reviewed:** *Approved by Beecher R. Gray*

**Authority for the rule-making:** *G.S. 87-1; 87-10*

**Reason for Proposed Action:** *To allow applicants for licensure and license renewal to demonstrate financial responsibility by obtaining a bond.*

**Comment Procedures:** *Written comments or arguments on the proposed rule changes may be submitted to Mark D. Selph at the Board's office. The Board's address is PO Box 17187, Raleigh, NC 27619.*

**SECTION .0200 - LICENSING REQUIREMENTS**

**.0204 ELIGIBILITY**

(a) Limited License. The applicant for such a license must:

- (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
- (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least ~~ten thousand dollars (\$10,000.00).~~ *This requirement shall remain in effect for all applications made prior to October 1, 1990. For applications made on or after October 1, 1990 an applicant for a limited license must be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least twelve thousand five hundred dollars (\$12,500);*
- (3) Possess the competency and the ability, as revealed by the applicant's experience and education to engage in the practice of general contracting within a specified classification or classifications in order to successfully complete a single project of a value of less than or equal to two hundred fifty thousand dollars (\$250,000), such competency and ability being determined in the sole discretion of the Board;
- (4) Successfully complete 70 percent of each part of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant;

(b) Intermediate License. The applicant for such a license must:

- (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
- (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least fifty thousand dollars (\$50,000) as reflected in an audited financial statement prepared by a certified public accountant or a qualified independent accountant who is engaged in the public practice of accountancy;
- (3) Possess the competency and the ability as revealed by the applicant's experience and education to engage in the practice of general contracting within a specified classification or classifications in order to successfully complete a single project of a value of less than or equal to five hundred thousand dollars (\$500,000), such competency and ability being determined in the sole discretion of the Board;
- (4) Successfully complete 70 percent of each part of

the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant.

(c) Unlimited License. The applicant for such a license must:

- (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
- (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least one hundred thousand dollars (\$100,000) as reflected in an audited financial statement prepared by a certified public accountant or by a qualified independent accountant who is engaged in the public practice of accountancy;
- (3) Possess the competency and the ability, as revealed by the applicant's experience and education to engage in the practice of general contracting within a specified classification or classifications in order to successfully complete a single project of a value in excess of five hundred thousand dollars (\$500,000), such competency and ability being determined in the sole discretion of the Board;
- (4) Successfully complete 70 percent of each part of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant.

(d) Should the financial statement submitted by the applicant fail to demonstrate the required level of working capital, the applicant shall obtain a surety bond from a surety authorized to transact surety business in North Carolina pursuant to G.S. 58 Article 7, 16, 21, or 22. The surety shall provide proof that it maintains a rating from A.M. Best, or its successor rating organization, of either Superior (A++ or A+) or Excellent (A or A-). The bond shall be continuous in form and shall be maintained in effect for as long as the applicant maintains a license to practice general contracting in North Carolina or until the applicant demonstrates the required level of working capital. The application form and subsequent annual license renewal forms shall require proof of a surety bond meeting the requirements of this Rule. The applicant shall maintain the bond in the amount of fifty thousand dollars (\$50,000) for a limited license, two hundred fifty thousand dollars (\$250,000) for an intermediate license, and five hundred thousand dollars (\$500,000) for an unlimited license. The bond shall be for the benefit of any person who is damaged by an act or omission of the applicant constituting breach of a construction contract or breach of a contract for the furnishing of labor, materials, or professional services to construction undertaken by the applicant, or by an unlawful act or omission of the applicant in the performance of a construction contract. The bond required by this Rule shall be in addition to and not in lieu of any other bond required

of the applicant by law, regulation, or any party to a contract with the applicant. Should the surety cancel the bond, the surety and the applicant both shall notify the Board immediately in writing. If the applicant fails to provide written proof of financial responsibility in compliance with this Rule within 30 days of the bond's cancellation, then the applicant's license shall be suspended until written proof of compliance is provided. After a suspension of two years, the applicant shall fulfill all requirements of a new applicant for licensure. The practice of general contracting by an applicant whose license has been suspended pursuant to this Rule will subject the applicant to additional disciplinary action by the Board.

(d)(e) Reciprocity. If an applicant is licensed as a general contractor in another state, the Board, in its discretion, need not require the applicant to successfully complete the written examination as provided by G.S. 87-15.1. However, the applicant must comply with all other requirements of these Rules to be eligible to be licensed in North Carolina as a general contractor.

*History Note: Filed as a Temporary Amendment Eff. June 28, 1989 for a period of 155 days to expire on December 1, 1989;*

*Authority G.S. 87-1; 87-10;*

*Eff. February 1, 1976;*

*Readopted Eff. September 26, 1977;*

*Amended Eff. January 1, 1983;*

*ARRC Objection March 19, 1987;*

*Amended Eff. December 1, 1989; May 1, 1989; August 1, 1987;*

*Temporary Amendment Eff. May 31, 1996.*

## SECTION .0500 - LICENSE

### .0503 RENEWAL OF LICENSE

(a) Form. An application for renewal requires the holder of a valid license to set forth whether there were any changes made in the status of the licensee's business during the preceding year and also requires the holder to give a financial statement for the business in question. The financial statement need not be prepared by a certified public accountant or by a qualified independent accountant but may be completed by the holder of a license on the form itself. However, the Board may require a license holder to submit an audited financial statement if there is any evidence indicating that the license holder may be unable to meet his financial obligations. Except as provided herein, ~~the financial statement~~ evidence of financial responsibility will be subject to approval by the Board in accordance with the ~~working capital~~ requirements of Rule .0204 of this Chapter. A licensee may be required to provide evidence of continued financial responsibility satisfactory to the Board should circumstances render such evidence necessary, and shall provide the Board with a copy of any bankruptcy petition filed by the licensee within 30 days of its filing.

(b) Display. The certificate of renewal of license granted

by the Board, containing the signatures of the Chairman and the Secretary-Treasurer, must be displayed at all times by the licensee at his place of business.

*History Note: Filed as a Temporary Amendment Eff. June 28, 1989, for a period of 155 days to expire on December 1, 1989;*

*Authority G.S. 87-1; 87-10;*

*Eff. February 1, 1976;*

*Readopted Eff. September 26, 1977;*

*ARRC Objection March 19, 1987;*

*Amended Eff. December 1, 1989; May 1, 1989; August 1, 1987;*

*RRC Removed Objection of March 19, 1987 Eff. August 20, 1992 based on subsequent amendment;*

*Amended Eff. September 1, 1992;*

*Temporary Amendment Eff. May 31, 1996.*

# LIST OF RULES CODIFIED

**T**he List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.

**K**ey:

Citation = Title, Chapter, Subchapter and Rule(s)  
 AD = Adopt  
 AM = Amend  
 RP = Repeal  
 With Chgs = Final text differs from proposed text  
 Corr = Typographical errors or changes that requires no rulemaking  
 Temp. = Rule was filed as a temporary rule  
 Eff. Date = Date rule becomes effective

## NORTH CAROLINA ADMINISTRATIVE CODE MAY 96

TITLE	DEPARTMENT	TITLE	DEPARTMENT
1	Administration	16	Public Education
2	Agriculture	21	Occupational Licensing Boards
10	Human Resources	4	- Commission for Auctioneers
11	Insurance	12	- General Contractors
12	Justice	22	- Hearing Aid Dealers and Fitters
13	Labor	37	- Nursing Home Administrators
15A	Environment, Health, and Natural Resources	45	- Fee-based Practicing Pastoral Counselors
		66	- Veterinary Medical Board
		25	State Personnel

RULE CITATION				AD	AM	RP	WITH CHGS	CORR	TEMP	EFFECTIVE DATE
1	NCAC	29	.0200					✓		
			.0400					✓		
2	NCAC	9C	.0701 - .0702		✓				✓	05/13/96
			.0704			✓			✓	05/13/96
10	NCAC	15A	.0115 - .0116		✓		✓			07/01/96
			.0117 - .0118		✓		✓			07/01/96
			.0119		✓		✓			07/01/96
			.0120 - .0127		✓		✓			07/01/96
			.0205 - .0228			✓				07/01/96
	19C		.0209					✓		
			.0509					✓		
			.0510					✓		
11	NCAC	12	.0901	✓			✓			06/01/96
			.0918 - .0919	✓			✓			06/01/96

**LIST OF RULES CODIFIED**

RULE CITATION				AD	AM	RP	WITH CHGS	CORR	TEMP	EFFECTIVE DATE
11	NCAC	21	.0101 - .0105	✓			✓			06/01/96
			.0106	✓						06/01/96
			.0107 - .0110	✓			✓			06/01/96
12	NCAC	7D	.0808		✓		✓			06/01/96
13	NCAC	7F	.0101		✓					06/03/96
15A	NCAC	1M	.0101 - .0102	✓					✓	06/19/96
			.0201 - .0202	✓					✓	06/19/96
			.0301 - .0306	✓					✓	06/19/96
	2B		.0216		✓		✓			06/01/96
	2H		.0219		✓		✓			06/01/96
	3I		.0019	✓			✓			06/01/96
	3J		.0401		✓		✓			06/01/96
	7H		.2301 - .2305	✓			✓			06/01/96
	10B		.0116		✓		✓			07/01/96
			.0201		✓					07/01/96
			.0203		✓		✓			07/01/96
			.0208 - .0209		✓		✓			07/01/96
			.0214		✓		✓			07/01/96
			.0220	✓			✓			07/01/96
			.0302		✓					07/01/96
			.0303		✓		✓			07/01/96
	10C		.0205					✓		
			.0407					✓		
	10D		.0002 - .0003		✓		✓			07/01/96
	13B		.1404					✓		
			.1405					✓		
			.1406 - .1409		✓		✓			06/01/96
	21H		.0111		✓				✓	06/19/96
			.0113		✓				✓	06/19/96
16	NCAC	6A	.0001 - .0002			✓				06/01/96
		6B	.0001			✓				06/01/96
			.0005 - .0006			✓				06/01/96

**LIST OF RULES CODIFIED**

RULE CITATION				AD	AM	RP	WITH CHGS	CORR	TEMP	EFFECTIVE DATE
16	NCAC	6C	.0101		✓					06/01/96
			.0313	✓			✓			06/01/96
		6D	.0102			✓				06/01/96
			.0104			✓				06/01/96
			.0106	✓			✓			06/01/96
			.0301 - .0302		✓		✓			06/01/96
		6E	.0101		✓		✓			06/01/96
			.0102		✓		✓			06/01/96
			.0104		✓		✓			06/01/96
			.0202		✓		✓			06/01/96
		6G	.0301 - .0302			✓				06/01/96
			.0303		✓		✓			06/01/96
		6H	.0001		✓		✓			06/01/96
			.0006 - .0007		✓		✓			06/01/96
			.0008		✓					06/01/96
21	NCAC	4B	.0602					✓		
		12	.0204		✓				✓	05/31/96
			.0503		✓				✓	05/31/96
		22L	.0015					✓		
		37D	.0202					✓		
			.0401 - .0402					✓		
			.0405					✓		
			.0407					✓		
		45	.0201					✓		
			.0301					✓		
			.0501					✓		
			.0701					✓		
		66	.0106					✓		
			.0202					✓		
			.0207					✓		
			.0303					✓		
25	NCAC	1L	.0106					✓		

***This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, June 20, 1996 at 10:00 a.m. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners by Monday, June 17, 1996, at 5:00 p.m. Specific instructions and addresses may be obtained from the Rules Review Commission at 9190733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.***

**RULES REVIEW COMMISSION MEMBERS**

**Appointed by Senate**  
 Vernice B. Howard  
 Teresa L. Smallwood  
 Charles H. Henry  
 Philip O. Redwine - Vice Chairman

**Appointed by House**  
 Jennie J. Hayman - Chairman  
 Bill Graham  
 Paul Powell  
 Ed Shelton

**RULES REVIEW COMMISSION MEETING DATES**

June 20, 1996  
 July 18, 1996  
 August 15, 1996  
 September 19, 1996

October 17, 1996  
 November 21, 1996  
 December 19, 1996

**MEETING DATE: JUNE 20, 1996**

**FOLLOW UP MATTERS FROM PREVIOUS MEETING:**

Medical Board -

21 NCAC 32H .0702

**LOG OF FILINGS**

**RULES SUBMITTED: APRIL 20, 1996 THROUGH MAY 20, 1996**

AGENCY/DIVISION	RULE NAME	RULE CITATION	ACTION
<b>DHR/DIVISION OF MEDICAL ASSISTANCE</b>			
	Notice of Estate Recovery	10 NCAC 50D .0101	Adopt
	Permanently Institutionalized	10 NCAC 50D .0102	Adopt
	Ages 55 and Over	10 NCAC 50D .0103	Adopt
	Reconsideration Review	10 NCAC 50D .0201	Adopt
	Permanently Institutionalized	10 NCAC 50D .0301	Adopt
	Ages 55 and Over	10 NCAC 50D .0302	Adopt
	Filing Claim	10 NCAC 50D .0401	Adopt
	Collection of Claims	10 NCAC 50D .0402	Adopt
	Recovery Not Cost Effective	10 NCAC 50D .0501	Adopt
	Undue Hardship	10 NCAC 50D .0502	Adopt
	Determination of Undue Hardship	10 NCAC 50D .0503	Adopt
<b>DEHNR/ENVIRONMENTAL MANAGEMENT COMMISSION</b>			
	Neuse River Basin	15A NCAC 2B .0315	Amend
	Definitions	15A NCAC 2D .0101	Amend
	Compliance with Emission Standards	15A NCAC 2D .0501	Amend
	Sulfur Dioxide Emissions	15A NCAC 2D .0516	Amend
	Miscellaneous Volatile Emissions	15A NCAC 2D .0518	Amend
	Control of Nitrogen Dioxide	15A NCAC 2D .0519	Amend
	Control and Prohibition	15A NCAC 2D .0520	Repeal
	Control of Visible Emissions	15A NCAC 2D .0521	Amend



New Source	15A NCAC 2D .0524	Amend
National Emission Standards	15A NCAC 2D .0525	Repeal
Sources	15A NCAC 2D .0531	Amend
Excess Emissions	15A NCAC 2D .0535	Amend
Control of Mercury Emissions	15A NCAC 2D .0537	Amend
Odor Control	15A NCAC 2D .0539	Adopt
Purpose and Scope	15A NCAC 2D .0601	Amend
Sources Covered	15A NCAC 2D .0604	Amend
Program Schedule	15A NCAC 2D .0608	Amend
Airport Facilities	15A NCAC 2D .0804	Amend
Parking Facilities	15A NCAC 2D .0805	Amend
Definitions	15A NCAC 2D .0901	Amend
Applicability	15A NCAC 2D .0902	Amend
Automobile	15A NCAC 2D .0917	Amend
Can Coating	15A NCAC 2D .0918	Amend
Coil Coating	15A NCAC 2D .0919	Amend
Paper Coating	15A NCAC 2D .0920	Amend
Fabric and Vinyl Coating	15A NCAC 2D .0921	Amend
Metal Furniture Coating	15A NCAC 2D .0922	Amend
Surface Coating	15A NCAC 2D .0923	Amend
Magnet Wire Coating	15A NCAC 2D .0924	Amend
Bulk Gasoline Plants	15A NCAC 2D .0926	Amend
Bulk Gasoline Terminals	15A NCAC 2D .0927	Amend
Gasoline Service Stations	15A NCAC 2D .0928	Amend
Petroleum Refinery Sources	15A NCAC 2D .0929	Repeal
Coating	15A NCAC 2D .0934	Amend
Factory Surface Coating	15A NCAC 2D .0935	Amend
Manufacture of Rubber Tires	15A NCAC 2D .0937	Amend
Miscellaneous Volatile Emissions	15A NCAC 2D .0951	Amend
Vapor Return Piping	15A NCAC 2D .0953	Amend
Stage II Vapor Recovery	15A NCAC 2D .0954	Amend
Case-by-Case Maximum	15A NCAC 2D .1109	Amend
National Emission Standards	15A NCAC 2D .1110	Adopt
Maximum Control Technology	15A NCAC 2D .1111	Adopt
Definitions	15A NCAC 2D .1202	Amend
Reporting	15A NCAC 2D .1204	Amend
Emission Standards	15A NCAC 2D .1205	Amend
Operational Standards	15A NCAC 2D .1206	Amend
Purpose	15A NCAC 2D .1901	Adopt
Definitions	15A NCAC 2D .1902	Adopt
Permissible Open Burning	15A NCAC 2D .1903	Adopt
Air Curtain Burners	15A NCAC 2D .1904	Adopt
Regional Office Locations	15A NCAC 2D .1905	Adopt
Delegation	15A NCAC 2D .1906	Adopt
Permit Requirements	15A NCAC 2H .0610	Amend
Definitions	15A NCAC 2Q .0103	Amend
Compliance Schedule	15A NCAC 2Q .0109	Amend
Applicability	15A NCAC 2Q .0201	Amend
Definitions	15A NCAC 2Q .0202	Amend
Permit & Application Fees	15A NCAC 2Q .0203	Amend
Inflation Adjustment	15A NCAC 2Q .0204	Amend
Annual Emissions Reporting	15A NCAC 2Q .0207	Amend
Facilities	15A NCAC 2Q .0302	Amend
Permitting of Facilities	15A NCAC 2Q .0311	Amend
Purpose of Section	15A NCAC 2Q .0501	Amend
Applicability	15A NCAC 2Q .0502	Amend
Definitions	15A NCAC 2Q .0503	Amend

Application	15A NCAC 2Q .0507	Amend
Permit Content	15A NCAC 2Q .0508	Amend
Case-by-Case MACT Procedures	15A NCAC 2Q .0526	Adopt
<b>DEHNR/COMMISSION FOR HEALTH SERVICES</b>		
Definitions	15A NCAC 18A .2701	Amend
<b>NC BOARD OF PHARMACY</b>		
Office of the Board	21 NCAC 46 .1204	Amend
Examination	21 NCAC 46 .1505	Amend
Pharmacy Permits	21 NCAC 46 .1601	Amend
License by Reciprocity	21 NCAC 46 .1602	Amend
Out-of-State Pharmacies	21 NCAC 46 .1607	Amend
Excessive Dispensing	21 NCAC 46 .1811	Adopt
Certificate of Experience	21 NCAC 46 .1910	Repeal
Committee on Nominations	21 NCAC 46 .2104	Amend
Drugs and Devices	21 NCAC 46 .2403	Amend
Responsibilities	21 NCAC 46 .2502	Amend
Patient Counseling	21 NCAC 46 .2504	Amend
<b>NC PSYCHOLOGY BOARD</b>		
Fees	21 NCAC 54 .1605	Amend
Issuance of License	21 NCAC 54 .1705	Amend
Certificate of Registration	21 NCAC 54 .2202	Amend
Renewal of Certificate	21 NCAC 54 .2203	Amend
<b>NC REAL ESTATE COMMISSION</b>		
Agency Agreements	21 NCAC 58A .0104	Amend
Handling and Accounting	21 NCAC 58A .0107	Amend
Reporting Criminal Convictions	21 NCAC 58A .0113	Adopt
Filing and Fees	21 NCAC 58A .0302	Amend
Time and Place	21 NCAC 58A .0401	Amend
Subject Matter	21 NCAC 58A .0402	Amend
Business Entities	21 NCAC 58A .0502	Amend
License Renewal	21 NCAC 58A .0503	Amend
Active and Inactive	21 NCAC 58A .0504	Amend
Reinstatement	21 NCAC 58A .0505	Amend
Salesman to be Supervised	21 NCAC 58A .0506	Amend
Cancellation	21 NCAC 58A .0510	Adopt
Subpoenas	21 NCAC 58A .0610	Amend
Continuing Education	21 NCAC 58A .1702	Amend
Scope	21 NCAC 58C .0104	Amend
Course Scheduling	21 NCAC 58C .0305	Amend
Textbooks	21 NCAC 58C .0306	Amend
Real Estate Instructors	21 NCAC 58C .0307	Amend
Instructional Delivery Methods	21 NCAC 58C .0311	Adopt
Exception	21 NCAC 58C .0312	Adopt
Application	21 NCAC 58E .0203	Amend
Renewal of Approval	21 NCAC 58E .0204	Amend
Elective Course	21 NCAC 58E .0302	Amend
Criteria	21 NCAC 58E .0304	Amend
Instructional Delivery Methods	21 NCAC 58E .0310	Adopt
Course Completion Reporting	21 NCAC 58E .0406	Amend
Per Student Fee	21 NCAC 58E .0407	Amend
Renewal of Course	21 NCAC 58E .0411	Amend
Minimum Class Size	21 NCAC 58E .0503	Amend
Student Participation Standards	21 NCAC 58E .0511	Amend

**RULES REVIEW OBJECTIONS**

**ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

**Coastal Resources Commission**

<i>15A NCAC 7H .0208 - Use Standards</i>	<i>RRC Objection</i>	<i>03/21/96</i>
<i>Agency Revised Rule</i>	<i>Obj. Cont'd</i>	<i>03/21/96</i>
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	<i>04/18/96</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff.</i>	<i>05/01/96</i>
<i>15A NCAC 7H .2303 - Permit Fee</i>	<i>RRC Objection</i>	<i>05/16/96</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/16/96</i>
<i>15A NCAC 7H .2305 - Specific Conditions</i>	<i>RRC Objection</i>	<i>05/16/96</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/16/96</i>

**Environmental Management**

<i>15A NCAC 2B .0216 - Fresh Surface Water Quality Standards for Ws-iv Waters</i>	<i>RRC Objection</i>	<i>05/16/96</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/16/96</i>
<i>15A NCAC 2H .0219 - Minimum Design Requirements</i>	<i>RRC Objection</i>	<i>04/18/96</i>
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	<i>05/16/96</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff.</i>	<i>06/01/96</i>

**Commission for Health Services**

<i>15A NCAC 13B .1406 - Operational Requirements for Solid Waste Compost Facilities</i>	<i>RRC Objection</i>	<i>04/18/96</i>
<i>Agency Revised Rule</i>	<i>Obj. Cont'd</i>	<i>04/18/96</i>
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	<i>05/16/96</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff.</i>	<i>06/01/96</i>
<i>15A NCAC 13B .1407 - Classification/Distribution of Solid Waste Compost Products</i>	<i>RRC Objection</i>	<i>04/18/96</i>
<i>Agency Revised Rule</i>	<i>Obj. Cont'd</i>	<i>04/18/96</i>
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	<i>05/16/96</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff.</i>	<i>06/01/96</i>
<i>15A NCAC 13B .1408 - Methods for Testing and Reporting Requirements</i>	<i>RRC Objection</i>	<i>04/18/96</i>
<i>Agency Revised Rule</i>	<i>Obj. Cont'd</i>	<i>04/18/96</i>
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	<i>05/16/96</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff.</i>	<i>06/01/96</i>
<i>15A NCAC 13B .1409 - Approval of Alternative Procedures and Requirements</i>	<i>RRC Objection</i>	<i>04/18/96</i>
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	<i>05/16/96</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff.</i>	<i>06/01/96</i>

**Wildlife Resources Commission**

<i>15A NCAC 10D .0003 - Hunting on Game Lands</i>	<i>RRC Objection</i>	<i>05/16/96</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/16/96</i>

**HUMAN RESOURCES**

**Medical Care Commission**

<i>10 NCAC 3C .5401 - Definitions</i>	<i>RRC Objection</i>	<i>01/18/96</i>
<i>Agency Responded</i>	<i>Obj. Cont'd</i>	<i>02/15/96</i>
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	<i>03/21/96</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff.</i>	<i>05/01/96</i>
<i>10 NCAC 3C .5402 - Physician Req for Inpatient Rehabilitation Facilities or Units</i>	<i>RRC Objection</i>	<i>01/18/96</i>
<i>Agency Responded</i>	<i>Obj. Cont'd</i>	<i>02/15/96</i>
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	<i>03/21/96</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff.</i>	<i>05/01/96</i>
<i>10 NCAC 3C .5407 - Comprehensive Rehabilitation Personnel Administration</i>	<i>RRC Objection</i>	<i>01/18/96</i>
<i>Agency Responded</i>	<i>Obj. Cont'd</i>	<i>02/15/96</i>
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	<i>03/21/96</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff.</i>	<i>05/01/96</i>

# RULES REVIEW COMMISSION

10 NCAC 3C .5408 - Comprehensive Inpatient Rehabilitation Program Staffing Req.	RRC Objection	01/18/96
Agency Responded	Obj. Cont'd	02/15/96
Rule Returned to Agency	Obj. Cont'd	03/21/96
Agency Filed Rule for Codification Over RRC Objection	Eff.	05/01/96
10 NCAC 3C .5409 - Staff Training for Inpatient Rehabilitation Facilities or Unit	RRC Objection	01/18/96
Agency Responded	Obj. Cont'd	02/15/96
Rule Returned to Agency	Obj. Cont'd	03/21/96
Agency Filed Rule for Codification Over RRC Objection	Eff.	05/01/96
10 NCAC 3C .5412 - Additional Requirements for Traumatic Brain Injury Patients	RRC Objection	01/18/96
Agency Responded	Obj. Cont'd	02/15/96
Rule Returned to Agency	Obj. Cont'd	03/21/96
Agency Filed Rule for Codification Over RRC Objection	Eff.	05/01/96
10 NCAC 3C .5413 - Additional Requirements for Spinal Cord Injury Patients	RRC Objection	01/18/96
Agency Responded	Obj. Cont'd	02/15/96
Rule Returned to Agency	Obj. Cont'd	03/21/96
Agency Filed Rule for Codification Over RRC Objection	Eff.	05/01/96

## Commission for Mental Health, Developmental Disabilities and Substance Abuse Services

10 NCAC 15A .0126 - Resolution of Differences of Opinion	RRC Objection	05/16/96
Agency Revised Rule	Obj. Removed	05/16/96

## JUSTICE

### Private Protective Services

12 NCAC 7D .0808 - Concealed Weapons	RRC Objection	03/21/96
No Response from Agency	Obj. Cont'd	04/18/96
Agency Revised Rule	Obj. Removed	05/16/96

## MARITAL AND FAMILY THERAPY CERTIFICATION BOARD

21 NCAC 31 .0304 - Subsequent Reexaminations	RRC Objection	02/15/96
No Response from Agency	Obj. Cont'd	03/21/96
Rule Withdrawn by Agency	Obj. Cont'd	04/18/96

## MEDICAL BOARD

21 NCAC 32H .0702 - Requests	RRC Objection	04/18/96
No Response from Agency	Obj. Cont'd	05/16/96

## PUBLIC EDUCATION

### State Board of Education

16 NCAC 1A .0003 - Organization of Department	RRC Objection	05/16/96
Agency Repealed Rule	Obj. Removed	05/16/96
16 NCAC 6D .0106 - Limited English Proficiency Programs	RRC Objection	03/21/96
No Response from Agency	Obj. Cont'd	04/18/96
Agency Revised Rule	Obj. Removed	05/16/96
16 NCAC 6H .0007 - Special Education Assessment and Placement Procedures	RRC Objection	05/16/96
Agency Revised Rule	Obj. Removed	05/16/96

## CONTESTED CASE DECISIONS

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.*

### OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge*  
JULIAN MANN, III

*Senior Administrative Law Judge*  
FRED G. MORRISON JR.

### ADMINISTRATIVE LAW JUDGES

Brenda B. Becton  
Sammie Chess Jr.  
Beecher R. Gray  
Meg Scott Phipps

Robert Roosevelt Reilly Jr.  
Dolores Nesnow Smith  
Thomas R. West

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b>ALCOHOLIC BEVERAGE CONTROL COMMISSION</b>				
Fuad Saif Murshed v. Alc. Bev. Ctl. Comm. & Durham Mem. Bapt. Ch.	95 ABC 0922	Chess	04/24/96	
Alcoholic Beverage Control Commission v. Tremik, Inc.	95 ABC 0925	Morrison	03/25/96	
Alcoholic Beverage Control Commission v. Maria Virginia Tramontano	95 ABC 1200	West	04/23/96	
Alcoholic Beverage Control Commission v. Huffman Oil Co., Inc.	95 ABC 1251	West	04/03/96	11:03 NCR 166
Pinakin P. Talate v. Alcoholic Beverage Control Commission	95 ABC 1329	West	04/10/96	
Alcoholic Beverage Control Commission v. Entrepreneur, Inc.	95 ABC 1363	Reilly	05/02/96	
Alcoholic Beverage Control Commission v. Henry Franklin Gurganus	95 ABC 1389	West	04/01/96	
Andrew Parker v. Alcoholic Beverage Control Commission	95 ABC 1402	Phipps	03/27/96	
Barraq Sabri Alquza v. Alcoholic Beverage Control Commission	95 ABC 1424	Phipps	04/03/96	
Alcoholic Beverage Control Comm. v. Partnership T/A T & L Groceries	95 ABC 1443	West	03/26/96	
Alcoholic Beverage Control Commission v. Cashion's Food Mart, Inc.	95 ABC 1444	Gray	03/13/96	
Bro Bee, Inc. v. Alcoholic Beverage Control Commission	95 ABC 1480	West	04/15/96	
Alcoholic Beverage Control Commission v. Donald Ray Doak	95 ABC 1488	West	03/29/96	
Alcoholic Beverage Control Commission v. Janice Lorraine Jeter	96 ABC 0013	Reilly	04/26/96	
Alcoholic Beverage Control Commission v. Well Informed, Inc.	96 ABC 0016	Chess	05/28/96	
Alcoholic Beverage Control Commission v. Kubbard, Inc.	96 ABC 0017	Reilly	05/20/96	
Alcoholic Beverage Control Commission v. Stemmermans's, Inc.	96 ABC 0018	Chess	05/28/96	
George Wright and Alice Ramsuer v. Alcoholic Beverage Control Comm.	96 ABC 0058	Becton	04/16/96	
Alcoholic Beverage Control Commission v. Robert Montgomery McKnight	96 ABC 0135	Phipps	05/09/96	
Alcoholic Beverage Control Commission v. Jacqueline Robin Anthony	96 ABC 0184	Phipps	05/09/96	
Ghassan Hasan Issa v. Alcoholic Beverage Control Commission	96 ABC 0256	Morrison	05/23/96	

### COMMISSION FOR AUCTIONEERS

John W. Foster v. Auctioneer Licensing Board	96 CFA 0201	Phipps	05/06/96	
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### CRIME CONTROL AND PUBLIC SAFETY

Roland Lee Kelly, Jr. v. United Family Services, Victim Assistance/Crime Victims Compensation Comm.	95 CPS 0568	Morrison	05/29/96	
Robert F. Bronsdon v. Crime Victims Compensation Commission	95 CPS 1216	Chess	05/28/96	
Helen B. Hunter-Reid v. Crime Victims Compensation Commission	95 CPS 1336	Nesnow Smith	03/29/96	11:02 NCR 93

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Kenneth Saunders v. Victims Compensation Commission	95 CPS 1445	Chess	03/26/96	
Ruby H. Ford v. Crime Victims Compensation Commission	96 CPS 0110	Reilly	04/18/96	
Manuel Cervantes v. Victims Compensation Fund	96 CPS 0118	Chess	03/19/96	
<b>ENVIRONMENT, HEALTH, AND NATURAL RESOURCES</b>				
Gribble & Assoc. & Four Seasons Car Wash v. EHNHR	95 EHR 0576	Gray	04/25/96	
David Martin Shelton v. Rockingham County Dept/Public Health, EHNHR	95 EHR 0941	West	05/01/96	
Kinston Urological Associates, P.A. v. N.C. Cancer Program	95 EHR 1198*2	Nesnow Smith	03/27/96	11:02 NCR 97
Kinston Urological Associates, P.A. v. N.C. Cancer Program	95 EHR 1199*2	Nesnow Smith	03/27/96	11:02 NCR 97
Elsie & Tony Cecchini v. Environment, Health, & Natural Resources	95 EHR 1240	Reilly	04/22/96	
Gerald Mac Clamrock v. Environment, Health, & Natural Resources	96 EHR 0168	Phipps	05/06/96	
<i>Coastal Resources</i>				
Martin W. Synger v. Division of Coastal Management	95 EHR 1006	Chess	05/13/96	
J. E. Smith Construction Co. v. Division of Coastal Management	96 EHR 0074	Nesnow Smith	02/23/96	
Theodore D. Barris v. Town of Long Beach, NC & Coastal Mgmt, EHNHR	96 EHR 0277	West	05/09/96	
<i>Environmental Health</i>				
Paradise Ridge Home Owners by Anne Norburn v. EHNHR, Env. Health	96 EHR 0162	Phipps	05/06/96	
<i>Environmental Management</i>				
Herman E. Smith v. Division of Environmental Management	95 EHR 0962	West	04/30/96	
Conover Lumber Co., Inc. v. EHNHR, Division of Environmental Mgmt.	95 EHR 1081	Reilly	04/12/96	
Jack West d/b/a Jack West Tree Service v. Environmental Mgmt. Comm.	95 EHR 1421	Morrison	04/08/96	
<i>Land Resources</i>				
K&G Properties, Inc. v. EHNHR, Division of Land Resources	95 EHR 1078	Nesnow Smith	03/25/96	
<i>Marine Fisheries</i>				
Robert I. Swinson, Sr. v. EHNHR, Health & Nat. Res., Marine Fisheries	95 EHR 0320	Chess	03/29/96	11:03 NCR 168
Grayden L. Fulcher and Michael Styron, Sr. v. Div. of Marine Fisheries	96 EHR 0003	Reilly	03/06/96	
<i>Solid Waste Management</i>				
R. Donald Phillips v. EHNHR, Solid Waste Management Division	95 EHR 1190*4	Gray	05/22/96	
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<i>WIC Program</i>				
Lazelle Marks v. EHNHR, Division of Maternal and Child Health	95 EHR 0870	West	03/27/96	
Hani Sader v. Nutrition Services, Div/Maternal & Child Health, EHNHR	96 EHR 0054	West	05/22/96	
Bob's Quick Mart, Bobby D. Braswell v. Env., Health, & Natural Res.	96 EHR 0091	Nesnow Smith	04/02/96	
Larry E. Mis v. USDA-Food/Cons Svc, Cory Menees-WIC Prog., EHNHR	96 EHR 0164	Phipps	03/19/96	
<b>EQUAL EMPLOYMENT OPPORTUNITIES</b>				
Carl D. Davis v. Department of Correction	91 EEO 1101	Nesnow Smith	05/06/96	
<b>HUMAN RESOURCES</b>				
Cassandra M. Deshazo v. Christine E. Carroll, Chf Child Abuse/Neg. Sec.	95 DHR 1410	Phipps	03/28/96	
Medicus Robinson v. Department of Human Resources	96 DHR 0167	Nesnow Smith	04/12/96	
<i>Division of Child Development</i>				
Molly Fallin v. Department of Human Resources	94 DHR 0872*3	Gray	05/15/96	
Molly Fallin v. Department of Human Resources	95 DHR 1013*3	Gray	05/15/96	
Mary T. Hill v. DHR, Division of Child Development	95 DHR 1192	Phipps	03/27/96	
Iola Roberson v. DHR, Division of Child Development	95 DHR 1244	Gray	05/16/96	

# CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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## Division of Facility Services

Eloise Brown v. Dept. of Human Resources, Division of Facility Services	95 DHR 1002	Phipps	03/07/96	
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## Certificate of Need Section

Nash Hospitals, Inc. v. DHR, Div/Facility Services, Cert. of Need Sect.	95 DHR 1176*5	Phipps	05/23/96	11:06 NCR 389
Pitt Cty Mem. Hospital, Inc. v. DHR, Div/Facility Sries, Cert/Need Sect.	95 DHR 1177*5	Phipps	05/23/96	11:06 NCR 389

## Group Care Licensure Section

Alex L. McCall v. DHR, Div/Facility Svcs, Group Care Licensure Sec.	95 DHR 1456	Nesnow Smith	03/26/96	
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## Medical Facilities Licensure Section

Stacey Yvette Franklin v. Facility Services, Medical Facilities Lic. Sec.	96 DHR 0358	Morrison	05/16/96	
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## Division of Social Services

Rozena Chambliss v. Department of Human Resources	95 DHR 1044	Nesnow Smith	03/12/96	
Addie & Major Short v. Department of Human Resources	95 DHR 1063	Morrison	03/19/96	
Mr. and Mrs. Jessie Stevenson v. DHR, Division of Social Services	95 DHR 1072	Phipps	03/15/96	
William G. Fisher v. DHR, Div. of Social Services, Prog Integrity Branch	95 DHR 1234	Morrison	03/19/96	
Verna F. Nunn v. Department of Human Resources	95 DHR 1330	Gray	04/11/96	
Nancy Hooker, Helen Tyndall v. Department of Human Resources	96 DHR 0155	Gray	04/26/96	

## Child Support Enforcement Section

Donald E. Rideout Jr. v. Department of Human Resources	95 CSE 0952	Reilly	04/18/96	
Christopher F. Roakes v. Department of Human Resources	95 CSE 1131	Becton	05/03/96	
Richard R. Fox, Sr. v. Department of Human Resources	95 CSE 1169	Becton	03/19/96	
Joselito D. Pilar v. Department of Human Resources	95 CSE 1180	Chess	03/01/96	
David Lee Grady v. Department of Human Resources	95 CSE 1218	Morrison	03/26/96	
Patrick Orlando Crump v. Department of Human Resources	95 CSE 1221	Nesnow Smith	03/05/96	
Peter Robert Kovolsky v. Department of Human Resources	95 CSE 1230	Becton	03/11/96	
Tony Lee Zapata v. Department of Human Resources	95 CSE 1266	Gray	05/02/96	
Lawrence Dow Dean v. Department of Human Resources	95 CSE 1267	Morrison	03/29/96	
Carl E. Coffey v. Department of Human Resources	95 CSE 1270	Nesnow Smith	03/15/96	
Keith Dewayne Senters v. Department of Human Resources	95 CSE 1273	Phipps	04/01/96	
Mickey Turner v. Department of Human Resources	95 CSE 1278	Nesnow Smith	03/14/96	
James Joseph Gallagher v. Department of Human Resources	95 CSE 1280	Chess	03/19/96	
James Thomas McRae v. Department of Human Resources	95 CSE 1296	Chess	03/15/96	
Vincent E. Kochler v. Department of Human Resources	95 CSE 1301	Phipps	05/09/96	
David J. Moseley v. Department of Human Resources	95 CSE 1304	Chess	03/29/96	
Derrick L. Conyers v. Department of Human Resources	95 CSE 1308	Reilly	03/13/96	
Charles Edward Smith v. Department of Human Resources	95 CSE 1309	West	03/07/96	
Kevin Vereen v. Department of Human Resources	95 CSE 1315	Phipps	05/06/96	
James Curtis Witwer v. Department of Human Resources	95 CSE 1331	Becton	03/26/96	
Thornell Bowden v. Department of Human Resources	95 CSE 1345	Morrison	03/07/96	
Henry S. Sada v. Department of Human Resources	95 CSE 1367	Nesnow Smith	03/21/96	
Charles F. Moore v. Department of Human Resources	95 CSE 1369	Chess	03/27/96	
Daniel Leslie Baker v. Department of Human Resources	95 CSE 1373	Morrison	03/12/96	
John L. Pike v. Department of Human Resources	95 CSE 1376	Nesnow Smith	03/21/96	
Wm. R. Evans v. Department of Human Resources	95 CSE 1377	Becton	03/11/96	
Rory J. Curry v. Department of Human Resources	95 CSE 1380	Mann	03/15/96	
Lorin A. Brown v. Department of Human Resources	95 CSE 1382	Reilly	04/18/96	
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Cynthia Pinder v. Department of Human Resources	95 CSE 1406	Becton	03/11/96	
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Ramon Domenech v. Department of Human Resources	95 CSE 1408	Phipps	03/11/96	
Dennis L. McNeill v. Department of Human Resources	95 CSE 1435	Becton	03/13/96	
Tony A. Rogers v. Department of Human Resources	95 CSE 1436	Chess	05/16/96	
Rick E. Atkins v. Department of Human Resources	95 CSE 1437	Phipps	04/01/96	
Timothy A. Ratley (Jeanes) v. Department of Human Resources	95 CSE 1465	Morrison	03/26/96	
Richard E. Reader v. Department of Human Resources	95 CSE 1469	Nesnow Smith	04/29/96	
Wilbur Dewayne Bault v. Department of Human Resources	95 CSE 1475	West	03/13/96	
James C. Smith v. Department of Human Resources	96 CSE 0034	Gray	05/10/96	
Ronald D. Johnson v. Department of Human Resources	96 CSE 0084	Nesnow Smith	03/27/96	

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Johnny Leary v. Department of Human Resources	96 CSE 0085	Becton	05/03/96	
John W. Scott v. Department of Human Resources	96 CSE 0130	Mann	03/15/96	
Calvin S. Austin v. Department of Human Resources	96 CSE 0140	Phipps	05/17/96	
Derek Henslee v. Department of Human Resources	96 CSE 0188	Reilly	05/17/96	
Donald L. Carr, Jr. v. Department of Human Resources	96 CSE 0200	West	05/30/96	
Norman Waycaster v. Department of Human Resources	96 CSE 0245	Becton	05/16/96	
Lorenzo Wilson v. Department of Human Resources	96 CSE 0257	Phipps	05/06/96	
Cyril Lloyd Payne v. Department of Human Resources	96 CSE 0272	Reilly	05/31/96	
Thornell Bowden v. Department of Human Resources	96 CSE 0370	Morrison	05/17/96	
Carl R. Ritter v. Department of Human Resources	96 CSE 0380	West	05/08/96	
Kelvin Tarlton v. Department of Human Resources	96 CSE 0424	Morrison	05/29/96	
Terry Sealey v. Department of Human Resources	96 CSE 0430	Phipps	05/29/96	
Alan Kendell Locklear v. Department of Human Resources	96 CSE 0503	West	05/30/96	
Melinda S. Tunner v. Department of Human Resources, Child Sup. Enf.	95 DCS 0921	Morrison	05/09/96	
Jeanne G. Bishop v. Department of Human Resources, Child Sup. Enf.	95 DCS 0958	West	04/04/96	
Rebecca Beaver v. Department of Human Resources, Child Sup. Enf.	95 DCS 1114	Reilly	04/26/96	
Laura Heidorf v. Department of Human Resources, Child Support Enf.	96 DCS 0065	Reilly	03/22/96	

## INSURANCE

Carol M. Hall v. Teachers & State Employees Comp. Major Medical Plan	95 INS 1141	Phipps	04/01/96	
Arthur Wayne Dempsey v. Department of Insurance	95 INS 1255	Nesnow Smith	04/22/96	
Deborah B. Beavers v. Teachers & St. Emp. Comp. Major Med. Plan	95 INS 1411	Nesnow Smith	05/10/96	11:05 NCR 308
Nadia A. Hakim v. Department of Insurance	95 INS 1422	Nesnow Smith	03/26/96	

## JUSTICE

### *Education and Training Standards Division*

Freddie Lavern Thompson v. Criml. Justice Ed. & Training Stds. Comm.	95 DOJ 0731	Chess	02/29/96	
Shane Douglas Crawford v. Sheriffs' Ed. & Training Stds. Comm.	95 DOJ 0943	Reilly	05/17/96	
Valerie Maxine Brewington v. Criml. Justice Ed. & Training Stds. Comm.	95 DOJ 1129	Nesnow Smith	04/12/96	
Patricia Josephine Bonanno v. Sheriffs' Ed. & Training Stds. Comm.	95 DOJ 1152	Chess	03/25/96	
Rick M. Evoy v. Criminal Justice Ed. & Training Stds. Comm.	95 DOJ 1235	Chess	03/25/96	
Gregory Lee Daughtridge v. Sheriffs' Ed. & Training Stds. Comm.	96 DOJ 0027	Reilly	03/19/96	
Carlton Gerald v. Criminal Justice Ed. & Training Stds. Comm.	96 DOJ 0068	Gray	03/26/96	
Ken Montie Oxendine v. Criminal Justice Ed. & Training Stds. Comm.	96 DOJ 0071	West	03/28/96	
David Kent Knight v. Sheriffs' Ed. & Training Stds. Comm.	96 DOJ 0115	West	03/28/96	

### *Private Protective Services Board*

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## PUBLIC INSTRUCTION

Lavern K. Suggs v. NC Board of Education	95 EDC 0383	Nesnow Smith	03/13/96	11:01 NCR 50
J.T.S. & T.S., Parents of E.M.S. v. Chapel Hill-Carrboro City Schl. Sys.	95 EDC 1194	Mann	04/12/96	
L.O. v. Charlotte-Mecklenburg Board of Education	96 EDC 0285	Mann	05/31/96	
Candyece Ewanda Newsome v. Hertford County Board of Education	96 EDC 0344	Chess	05/15/96	

## STATE PERSONNEL

### *Department of Administration*

Jonathan L. Fann v. Department of Administration, Admin. Personnel	96 OSP 0042	Gray	05/24/96	
Carlton Gerald v. State Capitol Police, Department of Administration	96 OSP 0116	Gray	04/25/96	

### *Administrative Office of the Court*

Ethel R. Tyson v. NC Judicial Dept., Administrative Office of the Court	96 OSP 0080	Nesnow Smith	03/15/96	
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### *Appalachian State University*

Janice S. Walton v. Appalachian St University, Claude Cooper, Bill Ragan	96 OSP 0062	West	03/13/96	
Janice S. Carroll v. Appalachian St University, Claude Cooper, Bill Ragan	96 OSP 0063	West	03/07/96	



# CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Caldwell County</i>				
Blake C. Pace v. Caldwell County	96 OSP 0047	Morrison	04/01/96	
<i>NC Central University</i>				
Francina Y. Tate v. Chancellor Julius L. Chambers, NC Central Univ.	95 OSP 1432	Nesnow Smith	04/22/96	
<i>Central North Carolina School for the Deaf</i>				
Felicia S. Milton v. Central North Carolina School for the Deaf	95 OSP 1241	Chess	05/17/96	
<i>Cherry Hospital</i>				
Mary A. Boogaerts v. Cherry Hospital, Goldsboro, NC	96 OSP 0269	Becton	05/29/96	
<i>Department of Correction</i>				
Haydee Craver v. Department of Correction, Pender Correctional Inst.	95 OSP 1046	Gray	03/12/96	
Gregory Allen Jones v. Department of Correction, Supt. Bonnie Boyette	95 OSP 1290	Phipps	05/14/96	
Calvia L. Hill v. Department of Correction, McCain Correctional Hospital	95 OSP 1460	Gray	05/17/96	
Brenda Propst v. Foothills Correctional Institution	96 OSP 0199	Morrison	04/09/96	
Haydee C. Craver v. Department of Correction, Christopher Phillips	96 OSP 0348	Phipps	05/15/96	
<i>East Carolina University</i>				
Bela E. Karvaly, Ph.D. v. ECU Bd. of Trustees, Ch. Richard R. Eakin	96 OSP 0150	Chess	05/08/96	
<i>Employment Security Commission</i>				
Gene S. Baker v. Gov. James B. Hunt, Jr., Ann Q. Duncan, Chairman, Employment Security Commission	93 OSP 0707	Becton	05/16/96	11:05 NCR 300
Patricia Gary v. Employment Security Commission	95 OSP 0793	Chess	05/14/96	
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<i>Department of Environment, Health, and Natural Resources</i>				
Roberta Ann "Robin" Hood v. Environment, Health, & Natural Resources	95 OSP 0035	Reilly	04/09/96	
<i>Fayetteville State University</i>				
William C. Neal v. Fayetteville State University	95 OSP 0392	Nesnow Smith	04/22/96	
<i>Department of Human Resources</i>				
Ophelia Webb v. Edard R. Inman, Dir. Alamance Cty DSS, Alamance Cty DSS, Alamance County, and DHR	96 OSP 0112	Gray	03/13/96	
<i>Caswell Center</i>				
Ramona C. Jenkins v. Department of Human Resources, Caswell Center	89 OSP 0411	Becton	03/26/96	
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Franklin D. Sutton v. Department of Human Resources, Caswell Center	94 OSP 0766	Nesnow Smith	03/21/96	
<i>Durham County Department of Social Services</i>				
Jan E. Smith v. Durham County Department of Social Services	95 OSP 1121	Morrison	05/24/96	
<i>Halifax County Department of Social Services</i>				
Clairbel Thomas v. Halifax County DSS & Director, Halifax County DSS	95 OSP 0905	West	05/29/96	11:06 NCR 395
<i>Wake County Department of Social Services</i>				
Phyllis Gilbert v. Wake County Department of Social Services	95 OSP 1238	Phipps	05/17/96	

# CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Department of Labor</i>				
Kevin P. Kolbe, Sr. v. Department of Labor	95 OSP 0968	Morrison	03/14/96	11:01 NCR 58
<i>New Hanover County Board of Health</i>				
Tabandeh Zand v. New Hanover County Board of Health	95 OSP 1035	Nesnow Smith	03/01/96	
<i>North Carolina State University</i>				
Vernell Mitchell v. North Carolina Cooperative Extension	96 OSP 0132	Gray	05/10/96	
<i>Department of Transportation</i>				
Pearlie M. Simuel-Johnson v. Department of Transportation	94 OSP 0589- <sup>1</sup>	Gray	03/01/96	11:03 NCR 173
Dorothy J. Grays v. Div. of Motor Vehicles, Dept. of Transportation	94 OSP 1044	Reilly	04/12/96	
Pearlie M. Simuel-Johnson v. Department of Transportation	95 OSP 0837* <sup>1</sup>	Gray	03/01/96	
Melvin Duncan v. Department of Transportation	95 OSP 1462	Morrison	03/08/96	
Greg Brown v. Department of Transportation	96 OSP 0048	Reilly	05/02/96	
Jesse Wayne Castle v. State Highway Maint., Guess Rd., Durham, NC	96 OSP 0087	Gray	04/15/96	
Archie Brooks v. W. F. Rosser, Department of Transportation	96 OSP 0239	Nesnow Smith	05/17/96	
<i>Tri-County Mental Health Complex</i>				
Deborah Heil v. Tri-County Mental Health Complex	95 OSP 1100	Nesnow Smith	03/22/96	
<i>University of North Carolina</i>				
Jerel H. Bonner v. School of Nursing UNC at Chapel Hill	96 OSP 0026	Gray	03/12/96	11:01 NCR 61
Bela E. Karvaly, Ph.D. v. UNC Bd. of Gov., Pres. C.D. Spangler, Jr.	96 OSP 0151	Chess	05/08/96	
<b>UNIVERSITY OF NORTH CAROLINA</b>				
Sylvia Jeffries v. University of NC Hospitals at Chapel Hill	96 UNC 0067	Gray	04/16/96	

\* Consolidated cases.

**STATE OF NORTH CAROLINA**  
**COUNTY OF NASH**

**IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS**

**NASH HOSPITALS, INC. D/B/A** )  
**NASH GENERAL HOSPITAL** )  
**Petitioner,** )  
 )  
**v.** )  
**N.C. DEPARTMENT OF HUMAN RESOURCES** )  
**DIVISION OF FACILITY SERVICE** )  
**CERTIFICATE OF NEED SECTION** )  
**Respondent.** )  
 )  
**and** )  
 )  
**WAKE COUNTY HOSPITAL SYSTEM, INC.** )  
**D/B/A WAKE MEDICAL CENTER** )  
**Intervenor-Respondent** )

**95 DHR 1176**

**PITT COUNTY MEMORIAL HOSPITAL, INC.** )  
**Petitioner,** )  
 )  
**v.** )  
 )  
**N.C. DEPARTMENT OF HUMAN RESOURCES,** )  
**DIVISION OF FACILITY SERVICES** )  
**CERTIFICATE OF NEED SECTION** )  
**Respondent.** )  
 )  
**and** )  
 )  
**WAKE COUNTY HOSPITAL SYSTEM, INC.** )  
**D/B/A/ WAKE MEDICAL CENTER** )  
**Intervenor-Respondent** )

**95 DHR 1177**

**RECOMMENDED DECISION**

**THIS MATTER** came on to be heard before Administrative Law Judge Meg Scott Phipps on April 12, 1996 in Raleigh, North Carolina upon consideration of the following motions: 1) Petitioner's Motion for Partial Summary Judgment; 2) Respondent's Motion for Summary Judgment; and 3) Respondent-Intervenor's Motion for Summary Judgment. Responses were appropriately filed by all parties.

**APPEARANCES**

For Petitioners: Dean M. Harris  
Joy H. Thomas  
Moore & Van Allen, PLLC

For Respondent: Sherry C. Lindquist  
N.C. Department of Justice

For Respondent-Intervenor: Maureen D. Murray  
Terrill Johnson Harris  
Smith, Helms, Mulliss & Moore, LLP

ISSUES

1. Under the 1995 State Medical Facilities Plan ("SMFP"), can a health service facility that currently provides open heart surgery services expand its existing services at a satellite location which is located forty miles away from the existing service?
2. Did the Respondent exceed its authority and jurisdiction, act erroneously, fail to use proper procedure, act arbitrarily and capriciously, or fail to act as required by rule or law when it made a finding that Petitioner's project was not in actuality an expansion of Pitt Memorial Hospital's existing open heart surgery services?
3. Is Petitioner's project an expansion of its existing health services provided at Pitt Memorial Hospital?

Based upon the undisputed facts, the exhibits, the able arguments of counsel and the law, the undersigned makes the following:

STATEMENT OF UNDISPUTED FACTS

**I. The Parties**

1. Pitt Memorial Hospital, Inc. ("Pitt") is located in Greenville, North Carolina and is associated with the ECU Medical School ("ECU"). It is a not-for-profit hospital owned by Pitt County. Pitt presently provides open heart surgery services at or above 80% capacity. Pitt has three open heart operating rooms and four heart-lung bypass machines. One heart-lung machine is used for back-up services and a fifth machine is located at ECU for research.
2. Nash Hospitals, Inc. ("Nash") is also a not-for-profit hospital located approximately forty miles away from Pitt Memorial Hospital in another county. Nash does not provide open heart surgery services but does offer other cardiology related services including cardiac rehabilitation, cardiac catheterization, a twelve-bed coronary care unit and an emergency room staffed and equipped for treatment of cardiac emergencies. Cardiac diagnostic and therapeutic services are also available.
3. Wake Medical Center ("Wake") is a health service facility which operates an open heart surgery service in Raleigh, North Carolina. Wake's program operated at 55.8% of capacity in the fiscal year 1994.

**II. The State Medical Facilities Plan**

4. The General Assembly designated the Department of Human Resources as the State Health Planning and Development Agency and mandated this department to regulate the Certificate of Need law, to determine the need for health services in the State and to develop the State Medical Facilities Plan ("SMFP"). G.S. 131E-177. The SMFP is prepared by the Department of Human Resources and the North Carolina State Health Coordinating Council ("SHCC"), and approved by the Governor. G.S. 131E-176(25).
5. The 1993 SMFP stated that the supply of open heart surgery programs in North Carolina was adequate primarily because utilization of these facilities was below capacity.
6. The 1994 SMFP stated that the supply of providers and distribution of open heart surgery services and other cardiac services remained adequate and sufficient to meet the needs of North Carolina. Further, the SMFP stated:

An Advisory Committee on Specialized Cardiac Services was appointed by the Chairman of the State Health Coordinating Council in December, 1992. This committee, comprised of cardiologists, cardiac surgeons, third-party payors, health economists, and health care administrators, met in February and March, 1993. After review and analysis of information contained in the Staff Analysis of Specialized Cardiac Services, comparative utilization data presented by third-party representatives and epidemiologists and received from a sampling of other states, the committee recommended to the SHCC that based on this information, and the methodology for projecting open heart surgical operating room need, **no need for additional specialized cardiac services in 1994 was demonstrated.** (Emphasis added).

The SMFP did conclude, however, that a person currently providing specialized cardiac services may be considered for additional capacity to meet specific needs if utilization of existing services and equipment exceeded 80%.

7. The 1995 SMFP is applicable to Pitt's proposal and contains the language which is at issue in this contested case. The 1995 SMFP found the supply of open heart surgery services and other cardiac specialized services to be adequate. In 1993, the 51 operating rooms in North Carolina were being utilized at an annual rate of 55% or 11,292 procedures; these 51 rooms are capable of handling 20,400 procedures. However, open heart surgery procedures had increased at a rate of 31.2% between 1989 and 1993. Applying this same rate of growth to the present number of operating rooms, the 1997 utilization rate is projected to be 14,815 procedures. Therefore, even if the annual growth rate remains the same, there will be excess capacity of 5,585 procedures in 1997. At 80% of capacity, there would be excess capacity for 1,505 procedures. A graph in the SMFP shows an 18 year growth trend between 1981 and 1999 and demonstrates that the present open heart surgery services would reach 80% of capacity after the turn of the century.

8. A map in the 1995 SMFP shows that open heart surgery services are currently available within 45 miles of over 90% of North Carolina residents. Further the SMFP emphasized that improved accessibility does not outweigh the adverse affects caused by duplication of existing services. "Increasing geographic access may create lower volumes in existing programs" which would reduce "quality and efficiency, exacerbate existing problems" regarding the availability of staff, "and not necessarily reduce waiting time . . . ."

9. In conclusion, the 1995 SMFP states that there is no need for additional open heart surgery services or additional heart-lung bypass machines. One exception reads as follows:

... except that a health service facility that currently provides these services may apply for a certificate of need to expand its existing services to meet specific needs if utilization of the health service facility's existing open heart surgery services exceeds 80% of capacity.

10. The 1996 SMFP has not been adopted as a rule and is not legally applicable to this proceeding. Factually, however, it is relevant to note that the State Health Coordinating Council added the words "at its existing site or location" to the proposed 1996 SMFP provisions regarding expansions of existing open heart surgery programs operating at or above 80% capacity. This additional language was proposed after the SHCC and the Agency became aware that the Petitioners intended to interpret the present language to meet their plans to collaborate with Nash to provide open heart services.

### **III. Nash and Pitt's proposed projects.**

11. Nash submitted an application to offer open heart surgery services at Nash in 1994. On June 30, 1994, this application was denied by the Respondent. In the application, Nash proposed to affiliate with other providers including the academic medical center at Pitt and to utilize the research and teaching support at ECU. The program director and the open heart surgery team are basically the same as those proposed in Pitt's present application. Nash proposed an affiliation agreement between Pitt, ECU and Nash.

12. Nash had proposed changes for the 1993, 1994 and 1995 SMFPs which would have allowed Nash's application to be reviewed on an HSA (health service area) level rather than statewide.

13. On April 13, 1995, Pitt as lessee and Nash as lessor submitted an application to "expand" Pitt's existing open heart surgery services by leasing space from Nash in 1995. Prior to agency review of the application, the Department of Human Resources issued a press release and the Certificate of Need Section issued legal notices which refer to Pitt's proposal as an expansion. This language merely references the fact that Pitt has characterized its proposal to the Department as an expansion.

14. Pitt proposed to provide the cardiac surgeon and perfusionist to perform open heart surgery services, to purchase the additional heart-lung bypass machines, to take rights as lessee to the physical space to be used for open heart surgery and to retain full supervision and control of the service provided at Nash. However, the surgeon and the perfusionist were actually to be provided by East Carolina School of Medicine ("ECU") through an agreement with Pitt. ECU would also provide continuing medical education and back-up consultative support. The surgeon and the perfusionist were to reside in Rocky Mount (Nash County). All other new personnel would be provided by Nash. For these reasons, it appears that Pitt is only a middle-man for what could actually be

accomplished directly between Nash and ECU.

15. Pitt's proposal becomes one of form (expansion by lessor-lessee arrangement) over substance (new institutional health service at Nash). In fact, Petitioner's own memorandum of law at page 21 states: "The CON application made it clear to the Agency that the expanded open heart surgery service would be developed by ECU's Division of Cardiothoracic Surgery, through the auspices of Pitt." Pitt's application at page 30 states: "The PCMH satellite service will be developed and operated by ECU's Division of Cardiothoracic Surgery through PCMH" and further, "The PCMH satellite service will be staffed and managed on a day-to-day basis by NGH." On page 37 of the application, Pitt states: "Nash will also use its hospital-wide quality assurance plan as a framework to carry out monitoring and evaluation of open heart surgery service activities." Although Nash is the lessor and Pitt is the lessee, Nash will fund 92% (\$2,048,672.00) of the total capital expenditure for the project and Pitt will fund only 8% (\$173,866.00).

16. In the "Proposed Memorandum of Understanding" between ECU, Pitt and Nash, the collaborative effort by all three is clear. In fact, Nash agrees "to promote PCMH's program as a cooperative effort" of Pitt, ECU and Nash. Nash agrees to provide facility/staff/ancillary services in exchange for a percentage of the collected revenues. Nash also agrees to "provide day-to-day oversight of these services under direction of PCMH."

17. As the CON project analyst so found in his review, Pitt and Nash are actually co-applicants. For that reason, he requested an additional certification page from Nash and it was submitted.

### OFFICIAL NOTICE

Official notice is taken of the findings of fact made by the General Assembly when it enacted the Certificate of Need Law. Those findings which are set out in G.S. 131E-175 are incorporated by reference as if fully set out herein.

Based upon the foregoing undisputed statement of facts, the undersigned makes the following:

### CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this contested case. G.S. 131E-188.

2. There are no genuine issues of material fact and therefore, summary judgment is proper pursuant to G.S. 1A-1, Rule 56 of the N.C. Rules of Civil Procedure and 26 NCAC 3.0101(1).

3. As county hospitals, Pitt and Nash are subject to the Municipal Hospital Act which is codified in Part A of Article 2 of Chapter 131E of the General Statutes. A public hospital such as Pitt and Nash have the statutory authority to contract with or enter into any arrangement with any other public hospital for the provision of health care. G.S. 131E-7(b). Any municipality owning or operating a hospital may "operate branches and related services within this State but outside the boundaries of the county . . . ." G.S. 131E-14.1. No monies derived from taxes or municipal bonds or notes may be used for facilities located outside its boundaries. G.S. 131E-14.1(1) & (2).

4. Although county hospitals can have contractual arrangements with each other, G.S. 131E-178(a) requires that a health service facility obtain a certificate of need prior to offering or developing a "new institutional health service." The term "new institutional health service" is defined to include the development or offering of open heart surgery services as well as the purchase of a heart-lung bypass machine. G.S. 131E-176(16)(f) & (f1). A hospital is included in the definition of "health service facility." G.S. 131E-176(9b).

5. The 1995 State Medical Facilities Plan was adopted as a rule and became effective on January 1, 1995. 10 NCAC 3R .3030(8). It contains the following general rule: "It is determined that there is no need for additional open heart surgery services." Immediately following this general rule is one exception which states:

except that a health service facility that currently provides these services may apply for a certificate of need to expand its existing services to meet specific needs if utilization of the health service facility's existing open heart surgery

services exceeds 80% of capacity.

6. G.S. 131E-183 provides that any proposed project must be consistent with the "need determinations in the State Medical Facilities Plan, the need determinations of which constitute a determinative limitation on the provision of any health service ...." (emphasis added).

7. To "develop" when used in connection with health services means taking on activities which will result in the offering of the health service or the incurring of a financial obligation in relation to the offering of such a service. G.S. 131E-176(7). To "offer" means that the hospital holds itself as capable of providing, or as having the means for the provision of, specified health services. G.S. 131E-176(18). For Nash, this proposal clearly represents the offering and development of a "new institutional health service" because it does not presently provide open heart surgery services and it will be holding itself out as capable of providing the service at Nash. For Pitt, this proposal also represents the offering and development of a new institutional health service for two reasons: 1) because it has a financial obligation in this venture and 2) because it will hold itself out as providing the services at Nash.

8. Pitt's proposal is one of form (expansion by lessor-lessee arrangement) over substance (new institutional health service at Nash). Through Pitt's application, Nash is hoping to offer and develop its own open heart surgery facility. At the most, it is a joint venture between Nash, Pitt and ECU to provide open heart surgery services at Nash General Hospital. Thus, Respondent did not exceed its authority and jurisdiction, act erroneously, fail to use proper procedure, act arbitrarily and capriciously, or fail to act as required by rule or law when it found that Petitioner's project is not in actuality an expansion of Pitt's existing open heart surgery services.

9. Even though Pitt is operating at or above 80% of capacity, Pitt does not meet the exception to the 1995 SMFP general rule that there is no need for open heart surgery services primarily because Pitt has not shown that there are "specific needs" to be met that cannot be met by the existing open heart surgery service at Pitt or at other providers in North Carolina. The present services will be operating at excess capacity until after the year 2000 and the residents which Pitt proposes to serve at Nash are within 45 minutes of existing programs. Pitt has three heart-lung bypass machines operating at 80% of capacity but it also has one for back-up and an additional one used for research at ECU.

10. The 1995 SMFP exception to the general rule regarding need is clear and unambiguous. A rational reading of the rule in relation to the other provisions of Chapter 8 of the 1995 SMFP clearly shows that at the present time, there is no need for additional programs in North Carolina, however, if an existing facility is operating at 80% of capacity, it may apply for a certificate of need to expand that facility's service to meet the specific needs of the existing service. Webster's Dictionary defines "existing" to mean "to have being in a specific place." The CON project analyst referred to this definition. Pitt does not propose to expand where its existing service is located. Pitt and Nash are proposing a new institutional health service at Nash rather than an expansion of Pitt's present program. Using an allegorical example presented by Respondent-Intervenor's counsel at the hearing, a true expansion would be like one balloon being blown up larger than it is presently. But to do what Pitt is proposing requires blowing up a new balloon in another location. That is not an expansion of the first balloon.

11. The 1996 addition of the words "at its existing site or location" is not presently a rule and not legally applicable to this proceeding. Even if the 1996 proposed additional language could serve as a clarification tool for purposes of assisting the undersigned in making this decision, this "does not mean that the original language was prohibitively unclear or the Agency's interpretation of it was unreasonable." Recommended Decision, Presbyterian Orthopaedic Hospital vs. N.C. Department of Human Resources, Division of Facility Services, Certificate of Need Section, Mercy Hospital, Inc., and Stanley Memorial Hospital, 93 DHR 0805 (March 11, 1994 adopted in Final Agency Decision dated June 10, 1994). Changes in legislation and rules are proposed for numerous reasons. The addition, in this particular case, is neither an amendment nor a clarification. The proposed addition was merely a necessary step to address a clever attempt by Petitioners to interpret the 1995 exception to suit their needs. The Respondents needed to "head 'em off at the pass," so to speak, and perhaps, try to avoid unnecessary litigation.

Based upon the foregoing undisputed facts and conclusions of law, the undersigned makes the following:

**RECOMMENDED DECISION**

The Respondent's decision to deny the Petitioners' application should be **AFFIRMED**; therefore, the Petitioners' Motion for Partial Summary Judgment should be **DENIED** and the Respondent's and the Respondent-Intervenor's Motions for Summary Judgment should be **GRANTED**.

**MEMORANDUM**

26 NCAC 3 .0126(c)(7)

Respondent-Intervenor's counsel used another example to illustrate why the language of the 1995 SMFP is clear and unambiguous except to those who need to read the rule another way to suit their needs. A mother tells her child to go and play in the backyard. When the mother finds the child in a neighbor's yard two houses away, the child says, "But you didn't say whose backyard!" Everyone who knows better and is willing to live by the rules knows that the mother meant their own backyard. As Nash knew in August 1994, the SMFP policy permitted growth "only in locations that have the service."

Nash and Pitt/ECU have proposed a well thought out joint venture, one that will certainly add to Nash's other specialized cardiac services. However, the SHCC through its objective expertise has determined that at the present time, there is no need for additional open heart surgery services or heart-lung bypass machines in North Carolina nor does Pitt have any special needs in its existing program which can only be addressed by a new open heart surgery program at Nash. With patience and the passage of a few years, Nash will be well positioned to provide this service when the need arises.

**ORDER**

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, PO Drawer 27447, Raleigh, NC 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

**NOTICE**

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the Division of Facility Services, Department of Human Resources.

This the 23rd day of May, 1996.

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Meg Scott Phipps  
Administrative Law Judge



STATE OF NORTH CAROLINA  
COUNTY OF HALIFAX

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
95 OSP 0905

CLAIRBEL THOMAS, )  
Petitioner, )  
 )  
v. )  
 )  
HALIFAX COUNTY DEPARTMENT OF SOCIAL )  
SERVICES AND DIRECTOR, HALIFAX COUNTY )  
DEPARTMENT OF SOCIAL SERVICES )  
Respondent. )

**RECOMMENDED DECISION**

This contested case was heard on March 21, 1996 in Halifax, North Carolina, by Administrative Law Judge Thomas R. West.

**APPEARANCES**

Petitioner was represented by Lamont Wiggins of Rocky Mount, North Carolina. Mr. Wiggins made his appearance, for the first time, in the hearing.

Respondent was represented by W. Lunsford Crew of Roanoke Rapids, North Carolina.

**MOTIONS**

At the beginning of the hearing, the Halifax County Board of Social Services made two potentially dispositive motions.

1. The Board moved to dismiss the contested case arguing that Petitioner had failed to name the correct respondent.

A review of the record shows that the dispute which gave rise to this contested case was first reviewed by the Director of the Halifax County Department of Social Services as the first step of the grievance process. The Director denied Petitioner's grievance by letter dated May 8, 1995. The letter informed Petitioner that a copy of the Halifax County DSS Appeals Policy was enclosed. The Appeals policy is attached to the Respondent's Prehearing Statement and is made a part of the record of this contested case.

The Policy and Procedures governing the Appeals Process provides that Step 2 is an appeal to the Halifax County Social Services Board. The Policy provides that the Board will consider the grievance and then issue a recommendation to the Director. The Director is required to issue a final agency decision within ten days of receiving the Board's advisory opinion.

On May 23, 1995, Petitioner requested, in writing, a review of her grievance by the Halifax County Social Services Board. The Board reviewed Thomas' grievance on June 26, 1995. By letter dated July 6, 1995, the Director of the Department of Social Services notified Petitioner that " . . . the Halifax County Board of Social Services advised me that they found no evidence of racial discrimination in the selection made." The letter states that a copy of the Department of Social Services Appeals Process is enclosed. The Director did not adopt the advisory opinion of the Board or make a final decision denying Petitioner's grievance.

On August 11, 1995, Petitioner filed a paper writing with the Office of Administrative Hearings. The paper writing states that Petitioner wants to appeal her case to the State Personnel Commission and that, "I did not agree with the decision of the Halifax County Social Services Board." From and after the filing of the paper writing, the Clerk of the Office of Administrative Hearings generated notices denominating the Halifax County Social Services Board as the Respondent.

The Director of the Halifax County Board of Social Services argues that she is the proper Respondent, not the Board, and that this case should be dismissed.

The record is devoid of any evidence that Petitioner was given notice that the Director was the person against whom Petitioner should file a petition for a contested case. Instead, what is in the record is a letter from the Director dated July 6, 1995 in which the Director informs Petitioner that the Board had denied Petitioner's grievance at the second step. The Policy and Procedures attached to the letter does not state that the Director is the respondent in its description of "Step 3 - Appeal to the State Personnel Commission."

The result is that Petitioner could reasonably conclude that her grievance should proceed as a contested case against the Board. Neither the Board nor the Director gave Petitioner the kind of notice required by G.S. 150B-23(f) that the contested case should proceed against the Director.

The record shows that the Director of the Board was given notice of this contested case by the Clerk of the Office of Administrative Hearings on August 21, 1995 and that the Director has fully and vigorously defended this case. Therefore, the undersigned concludes and ORDERS as follows:

a. The proper respondent to this contested case is the Halifax County Department of Social Services and the Director of the Halifax County Department of Social Services, acting in her official capacity;

b. The Director has had notice of the transactions and occurrences which Petitioner seeks to prove in support of her Petition since on or about August 21, 1995;

c. The Petition is hereby amended to show the Department and the Director as the Respondents;

d. The amendment shall relate back to the filing of the paper writing on August 11, 1995;

e. The paper writing is sufficient to constitute a Petition commencing a Contested Case.

2. Respondent moved to dismiss the case for Petitioner's failure to serve a certificate of service showing service of the Petition. Following a discussion between counsel, the motion was withdrawn.

#### OTHER PREHEARING MOTIONS

1. Petitioner moved to compel certain discovery. The motion was DENIED for reasons stated on the record.

2. Petitioner moved to sequester witnesses. The motion was GRANTED.

#### ISSUE

Did Respondent discriminate against Petitioner on the basis of her race (African-American) when it promoted a Caucasian co-worker to the position of Income Maintenance Caseworker III rather than Petitioner?

#### BURDEN OF PROOF

The burden is on Petitioner to prove by the greater weight of the evidence that Respondent discriminated against her on the basis of race.

#### WITNESSES

##### For Petitioner:

Clairbel Thomas	-	Petitioner; Income Maintenance Caseworker II - DSS
Betty Hodge	-	Former DSS employee; applicant for position at issue
Vivian Scott	-	Income Maintenance Caseworker II; applicant for position at issue
Linda Brady	-	Medicaid Caseworker II; applicant for position at issue

Clay T. Richardson	-	Income Maintenance Caseworker II - DSS; applicant for position at issue
Martha Ray	-	Income Maintenance Caseworker II - DSS
Rose Whitaker	-	Income Maintenance Caseworker II - DSS
Dawn Carr (adverse witness)	-	Income Maintenance Division Chief

By stipulation, the parties agreed on what three more witnesses would testify, if called. The stipulated testimony will be set forth below. The three witnesses were:

Annie Smith	-	Caseworker II - DSS; applicant for position at issue
Kimberly Curley	-	Caseworker II - DSS
Carrie Doyle	-	Caseworker II - DSS

For Respondent:

Rose Scott	-	Personnel Officer - DSS
Betty Daniel	-	AFDC Unit Supervisor

**EXHIBITS**

P1	-	Petitioner's high school diploma
P2	-	Petitioner's Form DD214 (Certificate of Release or Discharge from Active Duty in the U.S. Army)
P3	-	Petitioner's Honorable Discharge from the U.S. Army
P4	-	Petitioner's Student Record from Halifax Community College
P5	-	Susan Moore's Application for Employment; structured interview questions and answers
P6	-	Clairbel Thomas' Application for Employment; structured interview questions and answers

**FINDINGS OF FACT**

I.

1. Clairbel Thomas is employed at the Halifax County Department of Social Services (hereafter "DSS") as an Income Maintenance Case Worker II. By the date of the hearing of this case, Thomas had been employed as a Caseworker with DSS for seven years. At the time of the personnel action at issue in this case, Thomas had been employed at DSS for six years.

2. Thomas is an African-American female.

3. On March 13, 1995, Thomas applied for a promotion at DSS to the position of Income Maintenance Case Worker III. Thomas was interviewed for the position, but on April 5, 1995, was informed by letter that she had not received the promotion.

4. The position was filled by Susan Moore. Moore was also an Income Maintenance Caseworker II at DSS. At the time Moore applied for the position, she had been employed at DSS for five and a half years.

5. Moore is a Caucasian female.

6. Thomas filed a grievance alleging racial discrimination. The grievance moved through Step 1 and Step 2 of the Policy and Procedures governing personnel action appeals at DSS. Thomas did not obtain the relief she was seeking, so she moved to Step 3 of the procedure by filing a Petition commencing a contested case.

7. The petition is sufficient and was filed in a timely and proper fashion.

II.

8. Betty H. Daniel and Dawn M. Carr interviewed the applicants for the Income Maintenance Caseworker III position. Daniel and Carr are Caucasian females.
9. Daniel is the Supervisor of the AFDC Unit at DSS. Daniel has been employed at DSS for twenty-three years.
10. Carr is the Chief of the Income Maintenance Division within the AFDC Unit at DSS.
11. Daniel supervises Carr. Carr supervises the Income Maintenance Caseworker III position at issue.
12. At the time of the interviews for the Caseworker III position, Moore was an Income Maintenance Caseworker II in the Income Maintenance Division and was supervised by Carr. Thomas, the Petitioner, was an Income Maintenance Caseworker II handling Medicaid claims and was not supervised by either Daniel or Carr.
13. Sixteen people applied for the position. Seven of the applicants were DSS employees. All of the DSS employees were interviewed by Daniel and Carr. Four of the DSS applicants are African-American females; three are Caucasian females.

III.

14. DSS employs 166 people. 43% of the staff is African-American; 56% of the staff is Caucasian.
15. At the time of the promotion at issue, the Director of DSS was Frances Butler. Butler is a Caucasian female. At the time of the hearing of this case, Butler had retired, and the Director of DSS was Evelyn Dawson. Dawson is an African-American female.
16. The Board of Social Services for Halifax County has five members; three members are African-American, two members are Caucasian.
17. DSS employs 53 workers that it classifies as "Para-Professional." This category includes Income Maintenance Caseworker IIs and IIIs. 40% of this category of workers is African-American; 60% is Caucasian.
18. Between January 1, 1990 and August 31, 1995, DSS promoted 46 employees. 46% of the people promoted are African-American; 54% of the people promoted are Caucasian.
19. The Income Maintenance Division within the AFDC Unit at DSS employs four staff members in Income Maintenance Caseworker III positions. None of the four people holding Caseworker III positions is African-American.
20. DSS employs 23 workers that it classifies as "Supervisory Staff." 43% of the people in this category (10) are African-American; 57% of the people (13) are Caucasian. Six of the workers in the Income Maintenance Division are classified as supervisors. One of the supervisors is African-American.

IV.

21. Daniel and Carr conducted structured interviews of the applicants. Each applicant was asked the same questions and each applicant was evaluated using a numerical scale.
22. Daniel and Carr evaluated the applicants on:
  - a. The completeness of their application;
  - b. General appearance;
  - c. Whether they had the minimum educational requirements;
  - d. Communication skill - how the applicants answered the questions asked by the interviewers;
  - e. Work experience - with DSS and with the AFDC program;
  - f. Experience in clinics operated by DSS.

23. Daniel and Carr did not evaluate the applicants who had worked at DSS on the basis of their general appearance on a day-to-day basis or their communication skills with people using the services of DSS.
24. After the interviews had been completed, Daniel and Carr met to evaluate the applicants. The two filled out a form denominated an "Interview Guide" for each applicant. The form has a list of five qualifications with a rating from 5 to 1. At the bottom of the chart, there is an overall summary and rating.
25. Daniel and Carr assigned a "2" in the "Education" category of qualifications if an applicant had completed High School and a "3" if the applicant had a two year college degree. No other training was rated. No rating above a "2" was assigned for courses taken which would lead to a two year degree.
26. Daniel and Carr determined the numerical ratings of the applicants in consultation with each other rather than individually.
27. The Interview Guide lists six questions for the interviewers to ask themselves to evaluate the applicants' qualifications for the job and six questions for the interviewers to ask themselves to evaluate the applicants' unfavorable factors.
28. The Interview Guide also provides a place for the interviewers to give an overall evaluation to the applicants, answer whether the applicant is adaptable and trainable and whether the applicant will contribute.

V.

29. Thomas' application and the forms used by Daniel and Carr during Thomas' interview were received into evidence as Exhibit P6.
30. On Exhibit P6, Daniel and Carr found Thomas to possess all of the qualifications for the Income Maintenance Caseworker III position.
31. Daniel and Carr found that Thomas did not have any of the unfavorable factors for the promotion.
32. The interviewers rated Thomas as a "Good" applicant and wrote that Thomas was adaptable and trainable and would contribute.
33. Daniel and Carr rated Thomas a "2" in Education because Thomas has graduated from high school. Thomas was certified as a Personnel Record Specialist in the U.S. Army and has 60 semester hours of course work at Halifax Community College, but none of this training resulted in a higher rating because the interviewers gave a higher rating than a "2" only if the applicants had a two year college degree or more. The interviewers used this rating criterion consistently with all of the applicants.
34. The interviewers rated Thomas and all of the other DSS applicants a "3" on "Additional Skills Training" because all of them had been given training in the relevant job skills while employed at DSS.
35. The interviewers rated Thomas a "3" on the Verbal Communication category based on how Thomas responded to questions during the interview. The interviewers used this rating criterion with all of the applicants.
36. The interviewers rated Thomas a "3" on the "Written Communication" category based on a paragraph each applicant was asked to write about the strengths they would bring to the position.
37. The interviewers rated Thomas overall as a "2.8" on a scale of 1 to 5.
38. The interviewers did not recommend Thomas for employment.

VI.

39. Moore's application and the forms used by Daniel and Carr during Moore's interview were received into evidence as Exhibit P5.

40. On Exhibit P5, Daniel and Carr found Moore to possess all of the qualifications for the Income Maintenance Case-worker III position.
41. Daniel and Carr found that Moore did not have any of the unfavorable factors for the promotion.
42. The interviewers rated Moore as a "Good" applicant and wrote that Moore was adaptable and trainable and would contribute.
43. Daniel and Carr rated Moore a "2" in Education because Moore has graduated from high school. Moore has no formal education beyond high school.
44. The interviewers rated Moore and all of the other DSS applicants a "3" on "Additional Skills Training" because all of them had been given training in the relevant job skills while employed at DSS.
45. The interviewers rated Moore a "4" on the Verbal Communication category.
46. The interviewers rated Moore a "4" on the "Written Communication" category based on a paragraph each applicant was asked to write about the strengths they would bring to the position.
47. The interviewers rated Moore overall as a "3.2" on a scale from 1 to 5.
48. The interviewers recommended Moore for promotion.

VII.

49. Betty Hodge was an Income Maintenance Caseworker II for four and a half years in the AFDC Unit at DSS. Hodge is a Caucasian female.
50. Hodge was an applicant for the promotion at issue.
51. Hodge came to work for DSS on the same day Moore did. Hodge worked closely with Moore and, like Moore, was supervised by Daniel.
52. Hodge believes Moore is a "preferred" employee who is given more latitude than other employees. Hodge believes Moore has a lighter workload and gets longer breaks than other employees. When Hodge was late for work, she was counseled; when Moore was late, she was not.
53. Hodge believes that Moore was not the most knowledgeable caseworker in the AFDC Unit.
54. Hodge no longer works at DSS, but manages a retail clothing store, D.A. Kelly's. When Hodge left DSS, she told Daniel she did not like the favoritism Daniel showed to some employees.

VIII.

55. Vivian Scott has been an employee of DSS for seventeen years and an Income Maintenance Caseworker II in the AFDC Unit for two to three years. Scott applied for the promotion at issue. Scott has a two year Associate of Arts degree.
56. Scott is an African-American female.
57. Scott has known both Thomas and Moore since they came to work at DSS. Scott does not believe Moore's work was any better than hers or anyone else's.
58. Scott believes that the attitude of management in the AFDC Unit is that if you don't like something there, you can just leave.

IX.

59. Linda Brady has been an employee of DSS for fifteen years, and a Caseworker II in the Medicaid Unit since 1982.

60. Brady knows both Moore and Thomas, having worked with both of them. Brady considers Thomas to be more qualified for the Caseworker III position than Moore is because Thomas has worked in the Medicaid, AFDC and Nursing home Units within DSS, and Moore has only worked within the AFDC Unit.

X.

61. Thomas has a more varied experience than Moore as a Caseworker, having worked taking applications for medicaid, AFDC, and nursing homes.

XI.

62. Clay T. Richardson has been an employee of DSS for five and a half years as of the date of this hearing. Richardson is employed as a Income Maintenance Caseworker II in the AFDC Unit.

63. Richardson applied for the promotion at issue in this case, but only because she did not think Moore had applied. Richardson has a two year Associate of Arts degree.

64. Richardson believes there is discrimination in the agency because Moore and another Caseworker, Bridget Byron, are treated better than the other employees. An example of the better treatment is Daniel's assigning Moore and Byron to work at the satellite clinics operated by DSS. Experience in the clinics was necessary job experience to be eligible for the Caseworker III promotion. Prior to Daniel's assigning just Moore and Byron to the clinics, the assignment rotated among all the Caseworker IIs. Richardson believes Daniel assigned Moore and Byron in order to qualify Moore for the promotion at issue.

65. It is not clear whether Richardson believes there is racial discrimination in the AFDC Unit, or that Moore is treated better than everyone else, and for that reason there is discrimination. Richardson did not testify there was racial discrimination. The Administrative Law Judge can only speculate whether Richardson believes there is racial discrimination, but is afraid of retaliation, or whether Richardson believes the discrimination is motivated by Daniel's and Carr's friendship with Moore rather than by racial animus.

XII.

66. Martha Ray has been employed by DSS for seventeen years, and has worked as a Caseworker II for several years. Ray is a Caucasian female.

67. Ray is familiar with Thomas and Moore as well as the Caseworker III position. Ray believes Thomas is more qualified for the position than Moore. Ray does not believe Moore was the most qualified applicant for the position because Moore does not act like she cares about her clients and did not perform well as an Income Maintenance Caseworker II.

68. Ray did not apply for the promotion because she thought either Moore or Bridget Byron would get it and, since Byron did not apply, she knew Moore would get it.

69. Ray believes there is discrimination in the AFDC Unit, but that it is based on friendship rather than racial animus.

XIII.

70. Rose Whitaker has worked at DSS since October 1, 1989, and has worked as an Income Maintenance Caseworker II for five years as of the date of this hearing. Whitaker is an African-American female.

71. Whitaker works in the AFDC Unit with Moore, but is also familiar with Thomas. Whitaker believes Thomas is more qualified than Moore for the Caseworker III position.

72. Whitaker did not apply for the Caseworker III position because she felt Moore and Bridget Byrum were prepped for the promotion because of their assignment to the Halifax Clinic operated by DSS.

XIV.

73. The parties stipulated in open hearing to the following:

- a. Annie Smith, Kimberly Curley and Carrie Doyle are employees of DSS;
- b. Smith is African-American, Curley is Caucasian and Doyle is African-American;
- c. All three employees are employed as Caseworker IIs;
- d. All three employees know Thomas and Moore;
- e. Smith applied for the Caseworker III promotion at issue, while Curley and Doyle did not;
- f. All three employees believe that Moore was not the most qualified applicant and that other applicants were more qualified;
- g. All three employees believe there is an atmosphere of disparate and discriminatory treatment at DSS.

XV.

74. In consultation with each other, Daniel and Carr rated Thomas, and the three other African-American females who applied for the promotion, a "2.8" on the rating sheet used in the structured interview. Vivian Scott and Clay T. Richardson received the 2.8 rating, just like Thomas and the other African-American applicant, Annie Smith, despite the fact that Scott and Richardson have Associate of Arts degrees and would have rated higher on the "Education" category on the Interview Guide sheet than Thomas and Smith as well as Moore.

75. Vivian Scott had worked with DSS for over fifteen years at the time of the interviews for the promotion at issue. Despite having worked twice as long as Thomas and Moore, Scott was only rated a "4" on the Interview Guide as compared to the "3" for Thomas and Moore.

76. Annie Smith's and Thomas' employment applications were more complete than Moore's application.

77. Thomas did not answer a question on her employment application regarding whether she had ever been convicted of an offense against the law other than a minor traffic violation. At the time of her application, Thomas had been convicted of Driving While Impaired. Thomas testified during her case in chief that the management of DSS was aware of the conviction at the time she interviewed for the Caseworker III position. Neither the Personnel Officer, Daniel, nor Carr, all of whom testified after Thomas, rebutted Thomas' testimony.

Based on the foregoing, the undersigned reaches the following:

**CONCLUSIONS OF LAW**

- 1. Thomas has established a prima facie case of racial discrimination:
  - a. She is a member of a protected group;
  - b. There has been an adverse action, i.e., Thomas applied for a promotion which she did not receive;
  - c. Thomas is qualified for the Income Maintenance Caseworker III position;
  - d. There is some other evidence of discrimination on the basis of race:
    - i. All of the African-American applicants received the same numerical rating despite having varied educational qualifications and varied seniority with DSS;
    - ii. Two of the African-American applicants received lower numerical ratings than Moore despite having better educations;
    - iii. One of the African-American applicants also had significantly more seniority than Moore;
    - iv. Daniel and Carr tallied the applicant's numerical scores in consultation, rather than separately as should be done in a structured interview;



- v. Several employees of DSS believe Moore received preferential treatment;
- vi. Both of the interviewers were Caucasian. The successful applicant is Caucasian.

2. DSS articulated a legitimate, non-discriminatory reason for selecting Moore for the promotion:
  - a. Both Moore and Thomas were qualified;
  - b. Both Moore and Thomas have similar educations and work experience;
  - c. Moore communicates more effectively than Thomas both verbally and with written language.
3. Moore is qualified for the position of Income Maintenance Caseworker III.
4. The brief essay attached to Moore's application is more complete and well written than the brief essay attached to Thomas' application.
5. The structured interview process used by DSS was deficient:
  - a. The interview team should contain more than two people;
  - b. One of the interviewers should have been the Personnel Officer or someone else in management that could have brought an agency-wide perspective to the interview;
  - c. The interview team should reflect the racial diversity of DSS;
  - d. The process should not rely solely on how a person dresses for an interview or performs in an interview when internal applicants are the focus, but should rely more heavily on performance evaluations.
6. The structured interview was most noticeably deficient in that the numerical ranking assigned to the applicants was not independently determined by each interviewer and then averaged, but was determined by the interviewers in consultation with each other.
7. The numerical rankings assigned to the applicants are invalid.
8. Thomas has shown, by the greater weight of the evidence, that the legitimate, non-discriminatory reason for selecting Moore over Thomas is false because the selection process was incapable of achieving a result that was legitimate. No applicant, other than Moore, received fair consideration.
9. Moore received the promotion because of Daniel's and Carr's personal bias in her favor (cronyism).
10. Thomas has not shown, by the greater weight of the evidence, that Respondent was motivated by racial animus in promoting Moore.

#### **RECOMMENDED DECISION**

The relief requested in the Petition should be DENIED.

#### **ORDER**

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, PO Drawer 27447, Raleigh, NC 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

#### **NOTICE**

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the State Personnel Commission.

This the 29th day of May, 1996.

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Thomas R. West  
Administrative Law Judge

# CUMULATIVE INDEX

(April 1996 - March 1997)

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This index provides information related to notices, rules and other documents published in the Register. The information provided below includes notices and rules published on or after December 1, 1995 and will be cumulative through March 1997. For assistance contact the Rules Division at 919/733-2678.

Fiscal Note: S = Rule affects the expenditure or distribution of state funds. L = Rule affects the expenditure or distribution of local government funds. SE = Rule has a substantial economic impact of at least \$5,000,000 in a 12-month period. \* = Rule-making agency has determined that the rule does not impact state or local funds and does not have a substantial economic impact. See G.S. 150B-21.4.

## ACUPUNCTURE LICENSING BOARD

21 NCAC 01 .0301		10:22 NCR 2860								
21 NCAC 01 .0705	10:17 NCR 2228		10:22 NCR 2834	*	Approve	04/18/96	*		11:04 NCR 220	
21 NCAC 01 .0709	10:17 NCR 2228		10:22 NCR 2834	*	Approve	04/18/96	*		11:04 NCR 220	

## ADMINISTRATIVE HEARINGS

26 NCAC 03	11:03 NCR 110									
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## ADMINISTRATION

### State Building Commission

1 NCAC 30G .0101		11:04 NCR 194								
1 NCAC 30G .0102		11:04 NCR 194								
1 NCAC 30G .0103		11:04 NCR 194								
1 NCAC 30G .0104		11:04 NCR 194								
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2 NCAC 09C .0701		11:05 NCR 282	11:06 NCR 324	*						
2 NCAC 09C .0702		11:05 NCR 282	11:06 NCR 324	*						
2 NCAC 09C .0704		11:05 NCR 282	11:06 NCR 324	*						
2 NCAC 48A .0206	10:24 NCR 3056		11:06 NCR 324	*						
2 NCAC 48A .0211	10:24 NCR 3056		11:06 NCR 324	*						
2 NCAC 48A .0214	10:24 NCR 3056		11:06 NCR 324	*						
2 NCAC 48A .1103	10:24 NCR 3056		11:06 NCR 324	*						
2 NCAC 48A .1110	10:24 NCR 3056		11:06 NCR 324	*						

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2 NCAC 48B .0112	10:24 NCR 3056		11:06 NCR 324	*						
2 NCAC 48B .0114	10:24 NCR 3056		11:06 NCR 324	*						
2 NCAC 48B .0119	10:24 NCR 3056		11:06 NCR 324	*						
2 NCAC 48B .0120	10:24 NCR 3056		11:06 NCR 324	*						
2 NCAC 52B .0201	10:24 NCR 3056		11:06 NCR 324	*						
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4 NCAC 06C .0205	10:18 NCR 2398									
4 NCAC 06C .0407	10:18 NCR 2398									
4 NCAC 06C .0409	10:18 NCR 2398									
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4 NCAC 13	10:24 NCR 3056									
<b>COMMUNITY COLLEGES</b>										
23 NCAC 02D .0325	10:24 NCR 3058									
23 NCAC 02E .0203	10:24 NCR 3058									
23 NCAC 03A .0113	10:24 NCR 3058									
<b>CULTURAL RESOURCES</b>										
<b>USS North Carolina Battleship Commission</b>										
7 NCAC 05 .0202	10:18 NCR 2398		11:04 NCR 188	*						
7 NCAC 05 .0203	10:18 NCR 2398		11:04 NCR 188	*						
7 NCAC 05 .0204	10:18 NCR 2398		11:04 NCR 188	*						
7 NCAC 05 .0207	10:18 NCR 2398		11:04 NCR 188	*						
<b>ENVIRONMENT, HEALTH, AND NATURAL RESOURCES</b>										
<b>15A Public Notice</b>										
15A NCAC 01K	10:19 NCR 2506									11:01 NCR 2
15A NCAC 01M .0101		11:06 NCR 368								
15A NCAC 01M .0102		11:06 NCR 368								

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15A NCAC 01M .0302		11:06 NCR 368								
15A NCAC 01M .0303		11:06 NCR 368								
15A NCAC 01M .0304		11:06 NCR 368								
15A NCAC 01M .0305		11:06 NCR 368								
15A NCAC 01M .0306		11:06 NCR 368								
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15A NCAC 07	11:04 NCR 183									
15A NCAC 07H .0106	10:16 NCR 1921		11:04 NCR 190	*						Notice Subject Matter
15A NCAC 07J .0102	10:24 NCR 3045		11:04 NCR 190	*						
<b>Environmental Management Commission</b>										
15A NCAC 02	10:24 NCR 3045									
15A NCAC 02	11:04 NCR 183									
15A NCAC 02B .0223	11:02 NCR 75									
15A NCAC 02B .0223	11:03 NCR 109									
15A NCAC 02B .0224	10:18 NCR 2400									
15A NCAC 02B .0227	10:18 NCR 2400									
15A NCAC 02B .0229	11:03 NCR 109									
15A NCAC 02B .0303	10:18 NCR 2400									
15A NCAC 02B .0315	11:02 NCR 75									
15A NCAC 02L .0106		10:19 NCR 2508								
15A NCAC 02L .0202	10:20 NCR 2591									
15A NCAC 02P .0402		10:19 NCR 2512								
15A NCAC 02Q .0102			11:06 NCR 350	*						
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15A NCAC 13C .0302	10:18 NCR 2317		11:06 NCR 357	*						
15A NCAC 13C .0303	10:18 NCR 2317		11:06 NCR 357	*						
15A NCAC 13C .0304	10:18 NCR 2317		11:06 NCR 357	*						
15A NCAC 13C .0305	10:18 NCR 2317		11:06 NCR 357	*						
15A NCAC 13C .0306	10:18 NCR 2317		11:06 NCR 357	*						
15A NCAC 13C .0307	10:18 NCR 2317		11:06 NCR 357	*						
15A NCAC 13C .0308	10:18 NCR 2317		11:06 NCR 357	*						
15A NCAC 18A	11:04 NCR 183									
15A NCAC 18A .1814					Approve	04/18/96			11:04 NCR 209	
15A NCAC 18A .2601		11:01 NCR 24	11:05 NCR 273	*						
15A NCAC 20D .0243					Approve	04/18/96			11:04 NCR 209	
15A NCAC 21H .0111		11:06 NCR 371								
15A NCAC 21H .0113		11:06 NCR 371								
<b>Marine Fisheries Commission</b>										
15A NCAC 03I .0019			10:21 NCR 2737	*	Approve	05/16/96	*			
15A NCAC 03J .0401			10:21 NCR 2688	*	Approve	05/16/96	*			
15A NCAC 03M .0202	11:03 NCR 110									
15A NCAC 03M .0504	11:03 NCR 110									
15A NCAC 03M .0511	11:03 NCR 110									
<b>Wildlife Resources Commission</b>										
15A NCAC 10B .0106	11:02 NCR 76									
15A NCAC 10B .0123	11:02 NCR 76									
15A NCAC 10B .0203	11:02 NCR 76									
15A NCAC 10B .0208	11:02 NCR 76									
15A NCAC 10B .0209	11:02 NCR 76									
15A NCAC 10C .0107	11:02 NCR 76									
15A NCAC 10C .0205	11:02 NCR 76									

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15A NCAC 10C .0401	11:02 NCR 76									
15A NCAC 10D .0002	11:02 NCR 76									
15A NCAC 10D .0003	11:02 NCR 76									
15A NCAC 10F .0102	10:19 NCR 2506		11:01 NCR 14	*						
15A NCAC 10F .0103	10:19 NCR 2506		11:01 NCR 14	*						
15A NCAC 10F .0104	10:19 NCR 2506		11:01 NCR 14	*						
15A NCAC 10F .0105	10:19 NCR 2506		11:01 NCR 14	*						
15A NCAC 10F .0106	10:19 NCR 2506		11:01 NCR 14	*						
15A NCAC 10F .0107	10:19 NCR 2506		11:01 NCR 14	*						
15A NCAC 10F .0109	10:19 NCR 2506		11:01 NCR 14	*						
15A NCAC 10F .0300	11:01 NCR 13									
15A NCAC 10F .0302	11:05 NCR 272									
15A NCAC 10F .0303	10:24 NCR 3057		11:06 NCR 355	*						
15A NCAC 10F .0305	10:19 NCR 2506		11:01 NCR 14	*						
15A NCAC 10F .0307	11:02 NCR 76									
15A NCAC 10F .0310	10:19 NCR 2506		11:01 NCR 14	*						
15A NCAC 10F .0310	10:24 NCR 3057		11:06 NCR 355	*						
15A NCAC 10F .0342	10:19 NCR 2506		11:01 NCR 14	*						
15A NCAC 10F .0348	10:19 NCR 2506		11:01 NCR 14	*						
15A NCAC 10G	11:01 NCR 13									
15A NCAC 10G .0100	11:02 NCR 76									
15A NCAC 10I .0001	10:22 NCR 2829		11:04 NCR 191	*						
15A NCAC 10I .0002	11:02 NCR 76									
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Voting Rights Act

Voting Rights Act

## GENERAL CONTRACTORS LICENSING BOARD

21 NCAC 12 .0204 10:22 NCR 2829 11:06 NCR 372  
 21 NCAC 12 .0503 10:22 NCR 2829 11:06 NCR 372

## GOVERNOR'S EXECUTIVE ORDERS

Number 95-EH, 4/24/96

## HUMAN RESOURCES

10 NCAC 41P .0013 11:06 NCR 323

Aging

10 NCAC 22 10:23 NCR 2956

## Child Day Care Commission

10 NCAC 03U .0102 10:20 NCR 2593

10 NCAC 03U .0604 11:03 NCR 109

10 NCAC 03U .0704 10:19 NCR 2506

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10 NCAC 03U .0710 10:22 NCR 2829

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10 NCAC 03U .2701 10:20 NCR 2593

10 NCAC 03U .2702 10:20 NCR 2593

10 NCAC 03U .2703 10:20 NCR 2593

10 NCAC 03U .2704 10:20 NCR 2593

## Facility Services

10 NCAC 03 10:18 NCR 2399

10 NCAC 03R .3001 10:21 NCR 2699

10 NCAC 03R .3001 10:23 NCR 2956

S/L/SE

10 NCAC 03R .3010 10:21 NCR 2699

10 NCAC 03R .3020 10:21 NCR 2699

10 NCAC 03R .3020 10:23 NCR 2956

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10 NCAC 03R .3030 10:21 NCR 2699



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10 NCAC 03R .3030	10:23 NCR 2956		11:06 NCR 328	S/L/SE						
10 NCAC 03R .3032		10:21 NCR 2699								
10 NCAC 03R .3032	10:23 NCR 2956		11:06 NCR 328	S/L/SE						
10 NCAC 03R .3040		10:21 NCR 2699								
10 NCAC 03R .3040	10:23 NCR 2956		11:06 NCR 328	S/L/SE						
10 NCAC 03R .3050		10:21 NCR 2699								
10 NCAC 03R .3050	10:23 NCR 2956		11:06 NCR 328	S/L/SE						
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Disproportionate Share List										
10 NCAC 26B .0105	10:18 NCR 2398		10:22 NCR 2831	*	Approve	04/18/96	*		11:04 NCR 207	11:03 NCR 101
10 NCAC 2611 .0506		11:02 NCR 77								
10 NCAC 2611 .0506	10:21 NCR 2686									
10 NCAC 50D										11:06 NCR 316
10 NCAC 50D .0101	10:24 NCR 3057	11:04 NCR 196								
10 NCAC 50D .0102	10:24 NCR 3057	11:04 NCR 196								
10 NCAC 50D .0103	10:24 NCR 3057	11:04 NCR 196								
10 NCAC 50D .0201	10:24 NCR 3057	11:04 NCR 196								
10 NCAC 50D .0301	10:24 NCR 3057	11:04 NCR 196								
10 NCAC 50D .0302	10:24 NCR 3057	11:04 NCR 196								
10 NCAC 50D .0401	10:24 NCR 3057	11:04 NCR 196								
10 NCAC 50D .0402	10:24 NCR 3057	11:04 NCR 196								
10 NCAC 50D .0501	10:24 NCR 3057	11:04 NCR 196								
10 NCAC 50D .0502	10:24 NCR 3057	11:04 NCR 196								
10 NCAC 50D .0503	10:24 NCR 3057	11:04 NCR 196								
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10 NCAC 03C .6208					Approve	04/18/96			11:04 NCR 206	
<b>Social Services Commission</b>										
10 NCAC 41F	10:23 NCR 2956									

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10 NCAC 41F .0706		10:21 NCR 2726	11:03 NCR 111	*						
10 NCAC 41F .0707		10:21 NCR 2726	11:03 NCR 111	S						
10 NCAC 41F .0812		10:21 NCR 2726	11:03 NCR 111	*						
10 NCAC 41F .0813		10:21 NCR 2726	11:03 NCR 111	S						
10 NCAC 41F .0814	10:23 NCR 2956		11:03 NCR 111	L						
10 NCAC 41I .0100	10:17 NCR 2228									
10 NCAC 41I .0102	10:17 NCR 2228			*						
10 NCAC 41P .0002	11:06 NCR 323		10:21 NCR 2687							
10 NCAC 41P .0005	11:06 NCR 323									
10 NCAC 41P .0006	11:06 NCR 323									
10 NCAC 41P .0008	11:06 NCR 323									
10 NCAC 41P .0009	11:06 NCR 323									
10 NCAC 41P .0010	11:06 NCR 323									
10 NCAC 41P .0011	11:06 NCR 323									
10 NCAC 41P .0012	11:06 NCR 323									
10 NCAC 42A .0701		10:21 NCR 2728								
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10 NCAC 42B .1210		10:21 NCR 2729								
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10 NCAC 42C .3701		10:21 NCR 2729								
10 NCAC 42C .3702		10:21 NCR 2729								
10 NCAC 42C .3703		10:21 NCR 2729								
10 NCAC 42C .3704		10:21 NCR 2729								
10 NCAC 42D .1409		10:21 NCR 2729								
10 NCAC 42D .1410		10:21 NCR 2729								
10 NCAC 42D .1411		10:21 NCR 2729								
10 NCAC 42D .1827		10:21 NCR 2729								
10 NCAC 42D .1828		10:21 NCR 2729								
10 NCAC 42D .1829		10:21 NCR 2729								
10 NCAC 42D .1830		10:21 NCR 2729								
10 NCAC 42V .0201		10:20 NCR 2597	11:03 NCR 111	*						
10 NCAC 42V .0802		10:20 NCR 2597	11:03 NCR 111	*						
10 NCAC 42V .0803		10:20 NCR 2597	11:03 NCR 111	*						

## INSURANCE

11 NCAC 12 .0551	10:18 NCR 2399		10:22 NCR 2831	*	Approve	05/16/96	*		11:05 NCR 283	
11 NCAC 16 .0703	10:18 NCR 2399		10:22 NCR 2832	*	Approve	05/16/96			11:05 NCR 284	

## JUSTICE

### Attorney General/Company Police

12 NCAC 021 .0101					Approve	04/18/96			11:04 NCR 208	
12 NCAC 021 .0206					Approve	04/18/96			11:04 NCR 208	
12 NCAC 021 .0210					Approve	04/18/96			11:04 NCR 208	

### Alarm Systems Licensing Board

12 NCAC 11 .0202	10:24 NCR 3057									
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## LABOR

### Occupational Safety and Health

13 NCAC 07F	11:03 NCAC 106									
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13 NCAC 07F .0201	11:03 NCR 106									
13 NCAC 07F .0301	11:03 NCR 106									
<b>MEDICAL BOARD</b>										
21 NCAC 32H	10:18 NCR 2400									
21 NCAC 32H .0101	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0102	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0201	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0203	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*			
21 NCAC 32H .0301	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0302	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0303	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0401	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0402	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0403	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0404	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0406	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0407	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0408	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0409	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0501	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0502	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0504	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0505	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0506	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0507	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0601	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0602	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	

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Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
21 NCAC 32H .0701	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0702	10:18 NCR 2400		10:22 NCR 2835	*	Object	04/18/96				
21 NCAC 32H .0801	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0901	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0902	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96			11:04 NCR 221	
<b>PSYCHOLOGY BOARD</b>										
21 NCAC 54 .2704					Approve	04/18/96			11:04 NCR 236	
21 NCAC 54 .2706					Approve	04/18/96			11:04 NCR 236	
<b>PUBLIC EDUCATION</b>										
16 NCAC 01A .0001					Approve	05/16/96			11:05 NCR 286	
16 NCAC 01A .0003					Approve	05/16/96			11:05 NCR 283	
<b>Standards Board for Public School Administration</b>										
16 NCAC 07	10:23 NCR 2957									
<b>REFRIGERATION EXAMINERS</b>										
21 NCAC 60 .0204	11:05 NCR 272									
21 NCAC 60 .0207	11:05 NCR 272									
21 NCAC 60 .0314	11:05 NCR 272									
<b>REAL ESTATE COMMISSION</b>										
21 NCAC 58A .0101	10:22 NCR 2829		11:03 NCR 114	*						
21 NCAC 58A .0105	10:22 NCR 2829		11:03 NCR 114	*						
21 NCAC 58A .0109	10:22 NCR 2829		11:03 NCR 114	*						
21 NCAC 58A .0110	10:22 NCR 2829		11:03 NCR 114	*						
21 NCAC 58A .0302	10:22 NCR 2829		11:03 NCR 114	*						
21 NCAC 58A .0503	10:22 NCR 2829		11:03 NCR 114	*						
21 NCAC 58A .0504	10:22 NCR 2829		11:03 NCR 114	*						
21 NCAC 58A .1501	10:22 NCR 2829		11:03 NCR 114	*						
21 NCAC 58A .1502	10:22 NCR 2829		11:03 NCR 114	*						

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(April 1996 - March 1997)

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					Action	Date				
21 NCAC 58A .1601	10-22 NCR 2835		11-03 NCR 114	*						
<b>REVENUE</b>										
17 NCAC 01C .0504		10-20 NCR 2599								
17 NCAC 01C .0506		10-20 NCR 2599								
17 NCAC 05C .0102			11-03 NCR 113	*						
17 NCAC 05C .2101			10-24 NCR 3059	*	Approve	05/16/96	*		11-05 NCR 284	
17 NCAC 06B .0612			10-22 NCR 2833	*	Approve	04/18/96	*		11-04 NCR 211	
17 NCAC 06B .3716			10-22 NCR 2833	*	Approve	04/18/96	*		11-04 NCR 211	
17 NCAC 07B .1101			10-21 NCR 2688	*	Approve	04/18/96	*		11-04 NCR 212	
17 NCAC 07B .1105			10-21 NCR 2688	*	Approve	04/18/96			11-04 NCR 212	
17 NCAC 07B .1108			10-21 NCR 2688	*	Approve	04/18/96			11-04 NCR 212	
17 NCAC 07B .1109			10-21 NCR 2688	*	Approve	04/18/96			11-04 NCR 212	
17 NCAC 07B .1110			10-21 NCR 2688	*	Approve	04/18/96			11-04 NCR 212	
17 NCAC 07B .1112			10-21 NCR 2688	*	Approve	04/18/96			11-04 NCR 212	
17 NCAC 07B .1114			10-21 NCR 2688	*	Approve	04/18/96			11-04 NCR 212	
17 NCAC 07B .1123			10-21 NCR 2688	*	Approve	04/18/96	*		11-04 NCR 212	
17 NCAC 07B .1602			10-21 NCR 2688	*	Approve	04/18/96	*		11-04 NCR 212	
17 NCAC 07B .1701			10-21 NCR 2688	*	Approve	04/18/96	*		11-04 NCR 212	
17 NCAC 07B .1702			10-21 NCR 2688	*	Approve	04/18/96	*		11-04 NCR 212	
17 NCAC 07B .1802			10-21 NCR 2688	*	Approve	04/18/96	*		11-04 NCR 212	
17 NCAC 07B .2401			10-21 NCR 2688	*	Approve	04/18/96	*		11-04 NCR 212	
17 NCAC 07B .2601			10-21 NCR 2688	*	Approve	04/18/96			11-04 NCR 212	
17 NCAC 07B .4002			10-21 NCR 2688	*	Approve	04/18/96			11-04 NCR 212	
17 NCAC 07B .4004			10-21 NCR 2688	*	Approve	04/18/96			11-04 NCR 212	
17 NCAC 07B .4008			10-21 NCR 2688	*	Approve	04/18/96	*		11-04 NCR 212	
17 NCAC 07B .4301			10-21 NCR 2688	*	Approve	04/18/96	*		11-04 NCR 212	
17 NCAC 07B .4408			10-21 NCR 2688	*	Approve	04/18/96	*		11-04 NCR 212	
17 NCAC 07B .4902			10-21 NCR 2688	*	Approve	04/18/96	*		11-04 NCR 212	

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					Action	Date				

Tax Review Board

11:02 NCR 72

Tax Review Board

11:06 NCR 318

## SOCIAL WORK, BOARD OF

21 NCAC 63 .0306 10:21 NCR 2739 11:03 NCR 118 \*

## SOIL SCIENTISTS, BOARD FOR LICENSING

21 NCAC 69 .0101 10:19 NCR 2507 11:04 NCR 200 \*  
 21 NCAC 69 .0102 10:19 NCR 2507 11:04 NCR 200 \*  
 21 NCAC 69 .0103 10:19 NCR 2507 11:04 NCR 200 \*  
 21 NCAC 69 .0104 10:19 NCR 2507 11:04 NCR 200 \*  
 21 NCAC 69 .0201 10:19 NCR 2507 11:04 NCR 200 \*  
 21 NCAC 69 .0202 10:19 NCR 2507 11:04 NCR 200 \*  
 21 NCAC 69 .0301 10:19 NCR 2507 11:04 NCR 200 \*  
 21 NCAC 69 .0302 10:19 NCR 2507 11:04 NCR 200 \*  
 21 NCAC 69 .0303 10:19 NCR 2507 11:04 NCR 200 \*  
 21 NCAC 69 .0304 10:19 NCR 2507 11:04 NCR 200 \*  
 21 NCAC 69 .0305 10:19 NCR 2507 11:04 NCR 200 \*  
 21 NCAC 69 .0306 10:19 NCR 2507 11:04 NCR 200 \*  
 21 NCAC 69 .0307 10:19 NCR 2507 11:04 NCR 200 \*  
 21 NCAC 69 .0308 10:19 NCR 2507 11:04 NCR 200 \*  
 21 NCAC 69 .0401 10:19 NCR 2507 11:04 NCR 200 \*  
 21 NCAC 69 .0402 10:19 NCR 2507 11:04 NCR 200 \*  
 21 NCAC 69 .0501 10:19 NCR 2507 11:04 NCR 200 \*

## STATE PERSONNEL COMMISSION

25 NCAC 01J .0613 10:23 NCR 2960

25 NCAC 01J .0613

Approve 03/21/96

11:01 NCR 26

## SUBSTANCE ABUSE PROFESSIONALS CERTIFICATION BOARD

21 NCAC 68 10:18 NCR 2401

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Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
21 NCAC 68 .0101	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0102	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96			11:04 NCR 238	
21 NCAC 68 .0201	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96			11:04 NCR 238	
21 NCAC 68 .0202	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0203	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0204	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0205	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0206	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0207	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96			11:04 NCR 238	
21 NCAC 68 .0208	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0209	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0210	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0211	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0212	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0213	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0401	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0402	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0403	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0404	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0405	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0406	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0407	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0701	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0702	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0703	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0704	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0705	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0706	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	



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					Action	Date				
21 NCAC 68 .0707	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0708	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96			11:04 NCR 238	
21 NCAC 68 .0709	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
<b>TRANSPORTATION</b>										
19A NCAC 06B .0401	10:23 NCR 2957		11:05 NCR 279	S						
19A NCAC 06B .0402	10:23 NCR 2957		11:05 NCR 279	S						
19A NCAC 06B .0403	10:23 NCR 2957		11:05 NCR 279	S						
19A NCAC 06B .0404	10:23 NCR 2957		11:05 NCR 279	S						
19A NCAC 06B .0405	10:23 NCR 2957		11:05 NCR 279	S						
19A NCAC 06B .0406	10:23 NCR 2957		11:05 NCR 279	S						
19A NCAC 06B .0407	10:23 NCR 2957		11:05 NCR 279	S						
19A NCAC 06B .0408	10:23 NCR 2957		11:05 NCR 279	S						
19A NCAC 06B .0409	10:23 NCR 2957		11:05 NCR 279	S						
19A NCAC 06B .0410	10:23 NCR 2957		11:05 NCR 279	S						
19A NCAC 06B .0411	10:23 NCR 2957		11:05 NCR 279	S						
19A NCAC 06B .0412	10:23 NCR 2957		11:05 NCR 279	S						
19A NCAC 06B .0413	10:23 NCR 2957		11:05 NCR 279	S						
19A NCAC 06B .0414	10:23 NCR 2957		11:05 NCR 279	S						
19A NCAC 06B .0415	10:23 NCR 2957		11:05 NCR 279	S						
19A NCAC 06B .0416	10:23 NCR 2957		11:05 NCR 279	S						
19A NCAC 06B .0417	10:23 NCR 2957		11:05 NCR 279	S						
<b>Highways, Division of</b>										
19A NCAC 02D .1101	10:23 NCR 2957		11:05 NCR 274	*						
19A NCAC 02D .1102	10:23 NCR 2957		11:05 NCR 274	*						
19A NCAC 02D .1103	10:23 NCR 2957		11:05 NCR 274	*						
19A NCAC 02D .1104	10:23 NCR 2957		11:05 NCR 274	*						
19A NCAC 02D .1105	10:23 NCR 2957		11:05 NCR 274	*						
19A NCAC 02D .1106	10:23 NCR 2957		11:05 NCR 274	*						

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					Action	Date				
19A NCAC 02D .1107	10:23 NCR 2957		11:05 NCR 274	*						
19A NCAC 02D .1108	10:23 NCR 2957		11:05 NCR 274	*						
19A NCAC 02D .1109	10:23 NCR 2957		11:05 NCR 274	*						
19A NCAC 02D .1110	10:23 NCR 2957		11:05 NCR 274	*						
19A NCAC 02D .1111	10:23 NCR 2957		11:05 NCR 274	*						
19A NCAC 02D .1112	10:23 NCR 2957		11:05 NCR 274	*						
<b>Motor Vehicles, Division of</b>										
19A NCAC 03E .0500	11:01 NCR 13									

# BARCLAYS OFFICIAL NORTH CAROLINA ADMINISTRATIVE CODE - 1995

DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
<b>Title 1 - Dept. of Administration - Full Title</b>	<b>201 00 00</b>	<b>\$63.00</b>	<b>\$90.00</b>
Division of Purchase & Contract	201 10 05	\$21.00	\$30.00
Federal Block Grant Funds	201 10 33	\$17.50	\$25.00
<b>Title 2 - Dept. of Agriculture - Full Title</b>	<b>202 00 00</b>	<b>\$98.00</b>	<b>\$140.00</b>
Food & Drug Protection Division	202 15 09	\$28.00	\$40.00
Structural Pest Control Committee	202 15 34	\$21.00	\$30.00
Agricultural Markets	202 15 43	\$21.00	\$30.00
Plant Industry	202 15 48	\$21.00	\$30.00
Animal Industry	202 15 52	\$21.00	\$30.00
<b>Title 3 - Dept. of State Auditor - Full Title</b>	<b>203 00 00</b>	<b>\$7.00</b>	<b>\$10.00</b>
<b>Title 4 - Dept. of Commerce - Full Title</b>	<b>204 00 00</b>	<b>\$87.50</b>	<b>\$125.00</b>
Alcoholic Beverage Control Commission	204 15 02	\$12.00	\$40.00
Banking Commission	204 15 03	\$24.50	\$35.00
Credit Union Division	204 15 06	\$14.00	\$20.00
Savings & Loan Division	204 15 09	\$14.00	\$20.00
Industrial Commission/Workers Compensation	204 15 10	\$14.00	\$20.00
Savings Institutions Division	204 15 16	\$24.50	\$35.00
<b>Title 5 - Dept. of Corrections - Full Title</b>	<b>205 00 00</b>	<b>\$56.00</b>	<b>\$80.00</b>
Division of Prisons	205 15 02	\$24.50	\$35.00
<b>Title 6 - Council of State - Full Title</b>	<b>206 00 00</b>	<b>\$21.00</b>	<b>\$30.00</b>
<b>Title 7 - Dept. of Cultural Resources - Full Title</b>	<b>207 00 00</b>	<b>\$21.00</b>	<b>\$30.00</b>
<b>Title 8 - State Board of Elections - Full Title</b>	<b>208 00 00</b>	<b>\$7.00</b>	<b>\$10.00</b>
<b>Title 9 - Offices of the Governor &amp; Lt. Governor - Full Title</b>	<b>209 00 00</b>	<b>\$31.50</b>	<b>\$45.00</b>
<b>Title 10 - Dept. of Human Resources - Full Title</b>	<b>210 00 00</b>	<b>\$346.50</b>	<b>\$495.00</b>
Licensing of Health Facilities	210 20 10	\$45.50	\$65.00
Detention Facilities	210 20 20	\$31.50	\$45.00
Mental Health & Rehabilitation Services	210 20 30	\$77.00	\$110.00
Social Services	210 20 40	\$119.00	\$170.00
Children Services/Day Care	210 20 41	\$31.50	\$45.00
Services for the Aging	210 20 42	\$31.50	\$45.00
Services for the Blind	210 20 43	\$28.00	\$40.00
Services for the Deaf & Hard of Hearing	210 20 44	\$17.50	\$25.00
Employment Opportunities	210 20 45	\$35.00	\$50.00
<b>Title 11 - Dept. of Insurance - Full Title</b>	<b>211 00 00</b>	<b>\$63.00</b>	<b>\$90.00</b>
Insurance	211 10 01	\$56.00	\$80.00
Consumer Services	211 10 04	\$24.50	\$35.00
Fire & Rescue Services	211 10 05	\$17.50	\$25.00
Agent Services	211 10 06	\$28.00	\$40.00
Engineering & Building Codes	211 10 08	\$21.00	\$30.00
<b>Title 12 - Dept. of Justice - Full Title</b>	<b>212 00 00</b>	<b>\$63.00</b>	<b>\$90.00</b>
Private Protective Services	212 10 07	\$21.00	\$30.00
Police & Sheriff's Education & Training Standards	212 10 09	\$31.50	\$45.00
NC Alarm Systems Licensing Board	212 10 11	\$17.50	\$25.00
<b>Title 13 - Dept. of Labor - Full Title</b>	<b>213 00 00</b>	<b>\$77.00</b>	<b>\$110.00</b>
Mine & Quarry Safety	213 15 06	\$14.00	\$20.00
General Safety/OSHA	213 20 00	\$31.50	\$45.00
Wage & Hour Rules	213 15 12	\$14.00	\$20.00
Boiler & Pressure Vessel Safety	213 15 13	\$14.00	\$20.00
Apprenticeship & Training	213 15 14	\$14.00	\$20.00
Elevator & Amusement Device Safety	213 15 15	\$14.00	\$20.00
<b>Title 14A - Dept. of Crime Control &amp; Public Safety - Full Title</b>	<b>214 00 00</b>	<b>\$31.50</b>	<b>\$45.00</b>
Alcohol Law Enforcement	214 00 08	\$17.50	\$25.00
Victims Compensation Fund	214 00 11	\$14.00	\$20.00
<b>Title 15A - Dept. of Environ., Health, &amp; Nat. Resources - Full Title</b>	<b>215 00 00</b>	<b>\$276.50</b>	<b>\$395.00</b>
Environmental Management	215 15 00	\$115.50	\$165.00
Air Quality	215 15 10	\$49.00	\$70.00
Water Quality	215 15 20	\$49.00	\$70.00
Land & Waste Management	215 15 30	\$56.00	\$80.00
Solid Waste Management	215 15 31	\$35.00	\$50.00
Underground Storage Tanks	215 15 32	\$17.50	\$25.00

DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
Coastal Management	215 15 40	\$31.50	\$45.00
Environmental Health	215 25 00	\$105.00	\$150.00
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